Wm Key's Book

Chillicothe

Ohio.

Nov. 1814.

Wm. Key's Book
1814

Lectures
on
Law
Delivered
By
The Honble. Lapping Reeve
and
James Gould Esquire
At
Litchfield
Connecticut
Am. Dom:
1811. & 1812.
Vol. IV

3.

Rights of Inhabitants

to the Constitution and the Union

Coal Extracts

Land Contracts

Preface. It has been thought the quantity of waste land in the Province would be the best criterion by which the extent of encouragement due to the Settlers could be ascertained by the Duration of the Contracts. And the distinction between the occupation and cultivation of Lots, as well as the different modes of Tenure, is provided for.

The former Clause which secures for the encouragement of Settlers their Lands free from Rent, is an Enactment of the Royal Instructions

The Requirement of Cultivation is provided for to lie on Record but in general that of Occupation will be sufficient. Lots of 200 Acres to Lots, and of 100 Acres to Lots, on the Banks of Rivers, are provided for. Persons who have Grants of Lands in the Province are to be encouraged by being permitted to exchange their Lands for Lots in the Province.

Fo

Feast Day

Richard [illegible] "Thy estate [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Real Property

Seal Contract

[illegible] Fees which inclusive of Postage
Rose [illegible] Fee [illegible] Fee [illegible]
pitual [illegible] [illegible] [illegible]
on the stat[illegible] De [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]

Agreeable does not include stamp duties
taxes or disbursements
charged with [illegible]
[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible]
on the stat[illegible] De [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible]

Circuit Court

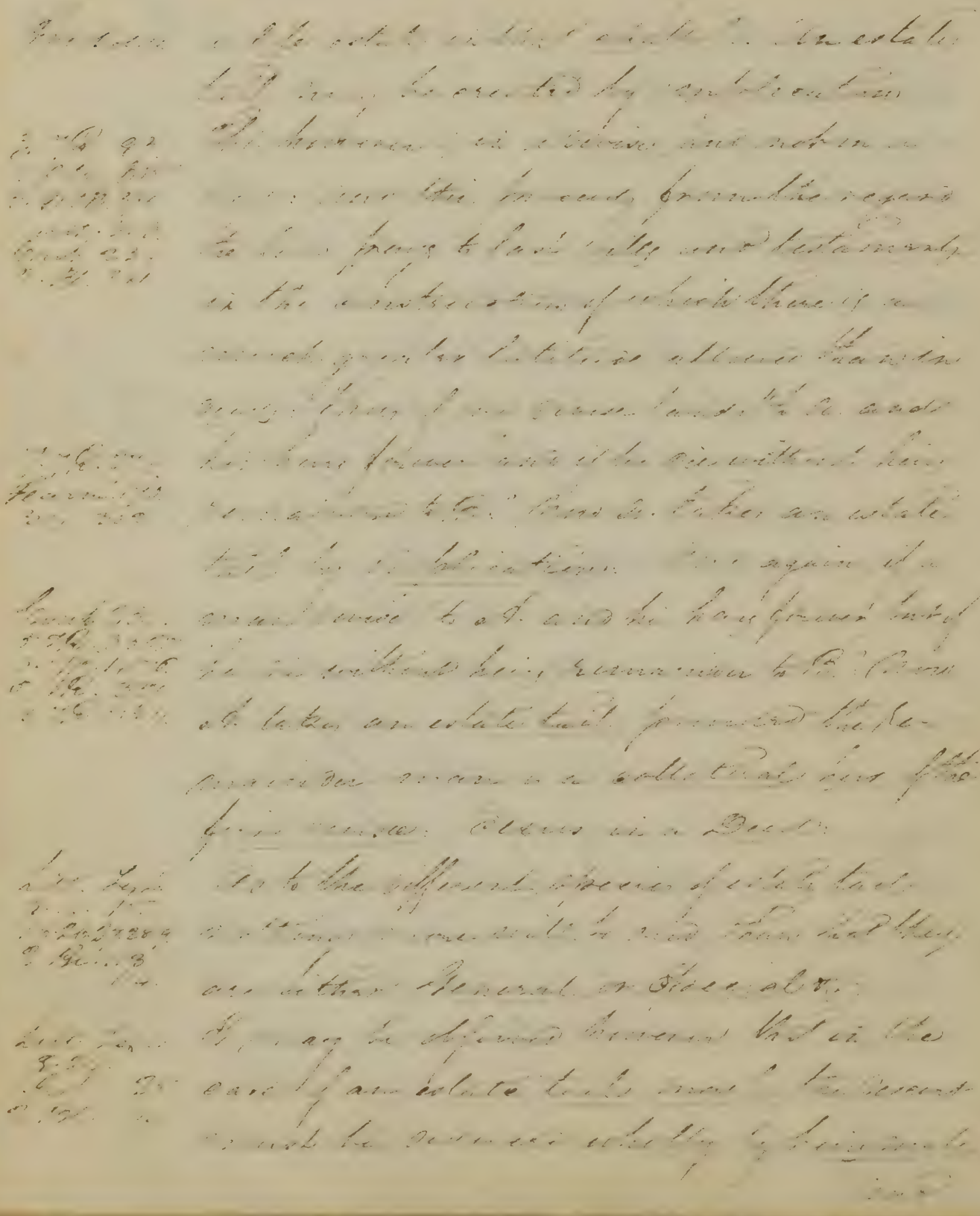
Local Courts

changing the name of the Corporation of Buckley and the local state of Illinois in the manner by granting to him the Buckley
Seal of his State to have and to hold to 3 Mer. 109.
what qualities for ministerial 3 Bl. 29.
and for the recovery of debts. 3 Bac. 20.

The Common Law Courts can not be held in any ground but in a certain hall of the City, and the Justices of the Peace can only hold their Courts in the Justices Court House. 3 Bl. 29.
1 Bl. 24.
Bac. 20.
Harris 3.
3 Bl. 34.

But these Courts have to attend to Petitions for the writ of habeas corpus and the writ of habeas corpus ad testificandum. Justices of the Peace can be entitled by writ, and entitled by writ of habeas corpus. But on the other hand they have to deal with the Petitions of the Justices of the Peace and the Justices of the Peace

Real Estate.



Deed Conveyance

and shall forever the Grantee and Grantees
Executors Administrators and Assigns.

& the word "Grant" is necessary to create a fee simple by deed the word "Give" is sufficient to pass a fee by gift or bequest without deed or grant or any other words. The above two words are "Grant & Give" & this is the only way of inheriting a fee simple. Words are needed in a grant to pass land with out them a grant is void & the words "Grant & Give" pass a fee simple & bind the Grantor & his heirs. Words of inheritance are not necessary in a deed to pass a fee simple. In these cases the grantee will take only a estate for life. If the other hand a grant without words of inheritance to pass a fee simple will pass a fee simple & bind the heirs as well as the Grantor. Both these by agreement (or the contrary) the word Grant" or "Give" is sufficient to pass a fee simple to the

Plaid Cap Jacks

Description of Plaid Cap Jacks. Used for Boys of 5 Years
Size. Procure 1 Yard of Plaid Cloth 36 Inches wide
& cut out a piece 12 Inches square. Fold it in
Half, by bringing one Side exactly over the
other, & cut off the Corners, so as to make
it Round. Then open it out, & fold it in
Half the other Way, & cut off the Corners
as before. Then open it out, & fold it in
Half again, & cut off the Corners as before.
Then open it out, & fold it in Half again,
& cut off the Corners as before. Then open
it out, & fold it in Half again, & cut off
the Corners as before. Then open it out,
& fold it in Half again, & cut off the
Corners as before. Then open it out, &
fold it in Half again

Real Property

Cook County

Real Property







Deed Register

[illegible] 3 Mo. 25'

[illegible] 1 Mar. 26
Mary 2 m.
Sept. 16

Estates upon Condition

States upon Condition.

Estates upon Condition

Estates upon Condition

Estates upon Condition

Estates upon Condition

Estates upon Condition

Estates upon Condition

Estates upon Condition

Estates upon Condition

Estates upon Condition

Limitations

Estates

Contingent

Executory

(Form Printed)

Mortgage (Fortune Bonds) dead pledge

Mortgage

This Mortgage is made this [illegible] day of [illegible] in the year of our Lord one thousand nine hundred and [illegible] between [illegible] of the City of [illegible] in the County of [illegible] and State of [illegible] party of the first part, hereinafter called the mortgagor, and [illegible] party of the second part, hereinafter called the mortgagee, witnesseth: That the said mortgagor, for and in consideration of the sum of one dollar to [illegible] in hand paid by the said mortgagee, the receipt whereof is hereby acknowledged, and for the purpose of securing the payment of the money hereinafter mentioned, and the performance of the covenants hereinafter contained, does by these presents grant, bargain, sell and convey unto the said mortgagee, [illegible] heirs and assigns forever, all [illegible] certain lot, piece or parcel of land, situate, lying and being in the [illegible] of [illegible] and State of [illegible] and more particularly described as follows, to wit:

[illegible]

This deed is called a deed in fee to secure the payment of the mortgage debt, and the covenants herein contained, and the estate hereby granted shall cease and be void if the said mortgagor [illegible]

Mortgages

Mortgages

Mortgage

Naufrages

Land Contracts

[illegible]

[illegible]

[illegible]

Real Property

Real Estate

of land is devised to trustees to raise money and after the sale to apply for payment of debts & bequests and to convey land to mortgage still if money sufficient cannot be raised the trustees may mortgage or even sell. but if sufficient can be raised they cannot mortgage or sell. if it were to be insufficient & the rent and profits [illegible] they cannot mortgage

of the interest of the mortgagor in the premises mortgaged

Or even a tenant for life cannot mortgage the mortgagee in the legal title nor even under the powers given by settlement or will.

If a tenant for life mortgages for a term of years

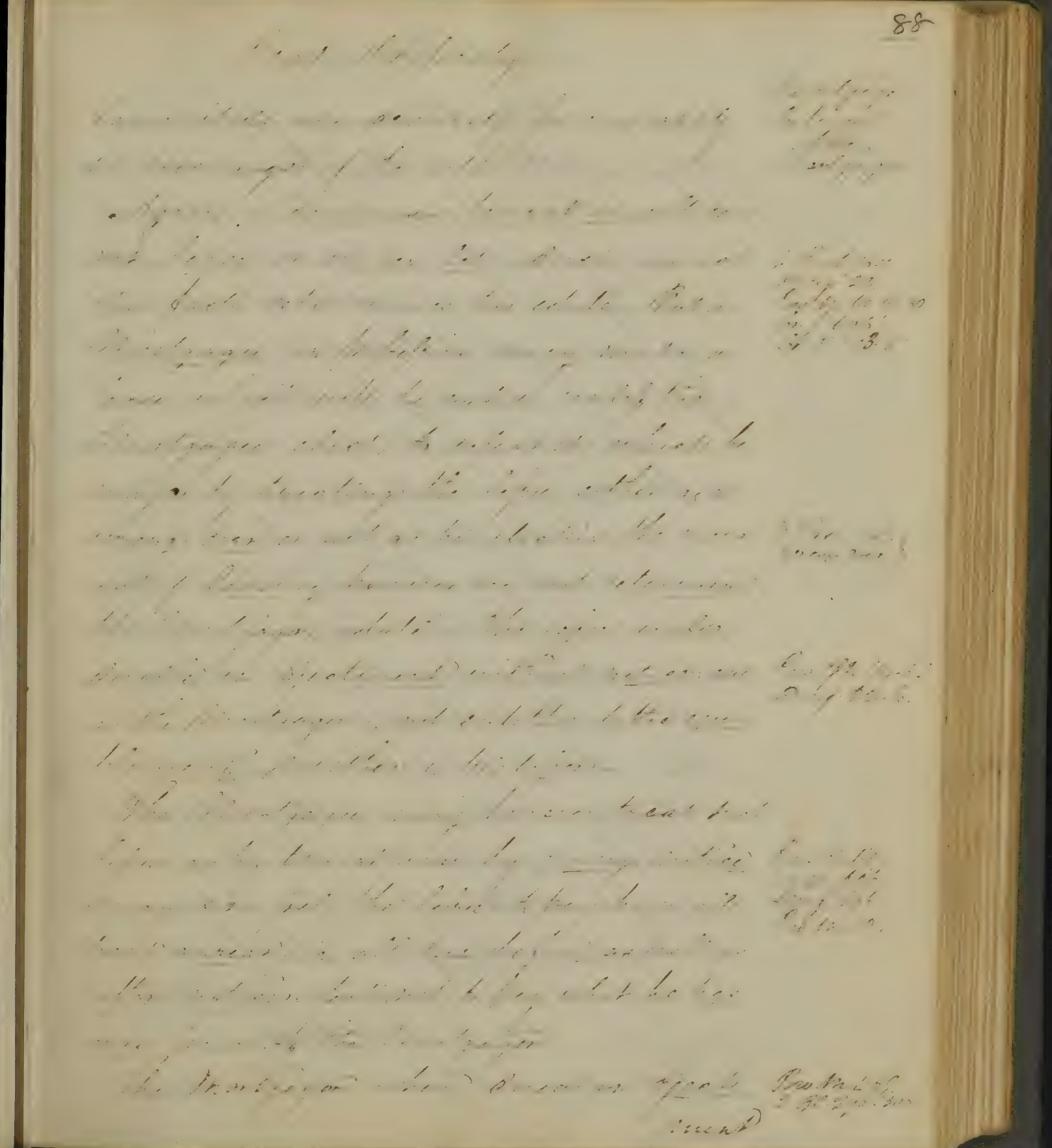
But if there be an agreement between the parties at the time that it shall remain in force for a certain time but a tenant for years [illegible]

Mortgage. How made Ex. 4.

Geo. Rudd v. Ex. 44. 224. Vin. 370.

Ex. 44. 224. 2 Ves. 5.

Ex. 44. 224. 2 Ves. 5.



Real Property.

mortgage, Interest of the mortgagee.

mere hereditament": but there is an exception to this rule, when the money is to be laid out in the purchase of land to be settled in strict settlement: for in such case the money is considered in equity as land arising therefrom, and shall go to the heir. And vice versâ, if land is directed to be sold and turned into money, it shall go to the executor.

Equity also considers the mortgagee as a trustee for the mortgagor, to the extent of the money advanced and interest, and no more; and therefore, if the mortgagee has entered into possession, he must account for the rents and profits received by him beyond the amount due for principal and interest. And the mortgagor has a right to redeem on payment of the debt due. However, that the mortgagee has been in the land and has taken the profits for many years, does not entitle him to foreclose

foreclose

[illegible]

Mortgage between the Mortgagor and Mortgagee

which is subject to the Mortgage made between the Mortgagor and the Mortgagee, and to all the covenants contained in such Mortgage, and to all the rights of the Mortgagee under the same, and to all the rights of the Mortgagor under the same

(Real Property)

Mortgages of land to secure future advances

Covenants implied in mortgage of freehold and leasehold property

Power of sale and of appointing receiver

Power of leasing

Power to accept surrender of leases

Power to sell subject to leases

Power to insure

Power to give receipts

Power to concur in dedication of streets &c.

Power to vary contracts

Power to delegate trusts

Power to appoint new trustees

Vesting of trust estate in new trustees

Vesting of mortgaged property in mortgagee

Power of mortgagee to enter into receipt of rents and profits

Power of mortgagee to cut timber &c.

Power of mortgagee to grant leases

Power of mortgagee to accept surrender of leases

Power of mortgagee to sell

Power of mortgagee to insure

Power of mortgagee to give receipts

Power of mortgagee to concur in dedication of streets &c.

Power of mortgagee to vary contracts

Power of mortgagee to delegate trusts

Power of mortgagee to appoint new trustees

Vesting of mortgaged property in new trustees

Real Property

Mortgages

a. 6. 61. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
mortgagor [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
claim it. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[

[illegible]

Mortgage

being permitted to take [illegible]
[illegible] between [illegible] and the
[illegible] is a matter [illegible] in this
case. If more [illegible] by Lord
Clayton's Trustees had [illegible] are
[illegible] by the payment of Trustees
Debts and Legacies: the Lord
should have no preference. because
the Lord & the Testator alone create
the Trust: and the Devisees &
Heirs, no Inheritance: But this Doubt
being the [illegible] to other Decisions
and he thinks not under [illegible]
[illegible] with day [illegible]
to be just before it [illegible]

Prior Legatees & Creditors have no priority
where the Trust is not executed: but
that a Prior Mortgage shall have
the Debt and [illegible] of Remuneration
in preference to other Creditors: tho'
this interest; but an equity the Legal
estate being in the first Mortgagee.

For

Mortgagee
Ag. of the
Prior may
claim in it.
2 Atk. 492.
3. 387.

Ca. in Eq.
2 Chan. Rep. 270
2 Eq. Ca. Ab. 371.

3 Atk. 248.
1 Ambl. 171.
[illegible]

Ca. in Eq. 130.
1 Chan. Rep. 131.

Mortgage

Real Contracts

Mortgage
Pl. 1 Co.
Bathurst
Chan. R.

[illegible] mortgage, he will be
[illegible] in case to be redeem before
the time. [illegible] by the covenant
value of the land. The heir and
[illegible] entitled to redeem before
the day of payment.

If [illegible] be entered upon the land
pawn by grant, bearing a date after
the [illegible] it must be before the
time there can be any [illegible]
[illegible] mortgage, [illegible] to secure
one loan, and afterwards "White acre"
to secure another, one of which [illegible]
[illegible] is conditional and the other
[illegible] absolute. he is not allowed
to redeem the one without the
other. And the rule is not altered though
he has ability to redeem

So if one parcel has mortgage to one
& two and then another parcel is mort-
gag by second covenant to repeat one

Cas. Ch. 134.
1 Ch. Ca. 36.
Ch. Ca. 2 Ch. 2.
Finch. 4 Ch.
2 Ch. Ca. 36.

Cas. Ch. 134.
2 Vern. 61.
1 Vern. 236.
1 Ch. Ca. 36.

and

[illegible]

Mortgagor entitled to redeem

The Mortgagor and all persons claiming under him, shall have the power of the Mortgagee to sell subject to the equity of redemption.

Mortgagee may foreclose

And if the Mortgagor covenant the Mortgagee may foreclose and in default of payment of the money secured thereby, it will be lawful for him, his heirs & assigns to enter into the premises and hold the same thereafter free from all claim of the Mortgagor his heirs & assigns.

Power of sale "Statutory"

Covenant by Mortgagor that A and B may foreclose in default of payment after a certain day and that A may sell the premises after the whole sum of the Mortgage money secured thereby shall become due.

Can the Mortgagor redeem after foreclosure?

If the Mortgagor is indebted to the Mortgagee otherwise than upon the Mortgage he will not be permitted to redeem unless he pay the whole debt.

Covenant for further assurance

Covenant by Mortgagor that he will execute such further assurances as may be reasonably required.

Portugal
Ed. 1 Vo.
Philadelphia
electrotyp.

Cambr. USA
8 vo th. 35c.
- Paris 15c.

Cambr. USA
8 vo th. 15c.

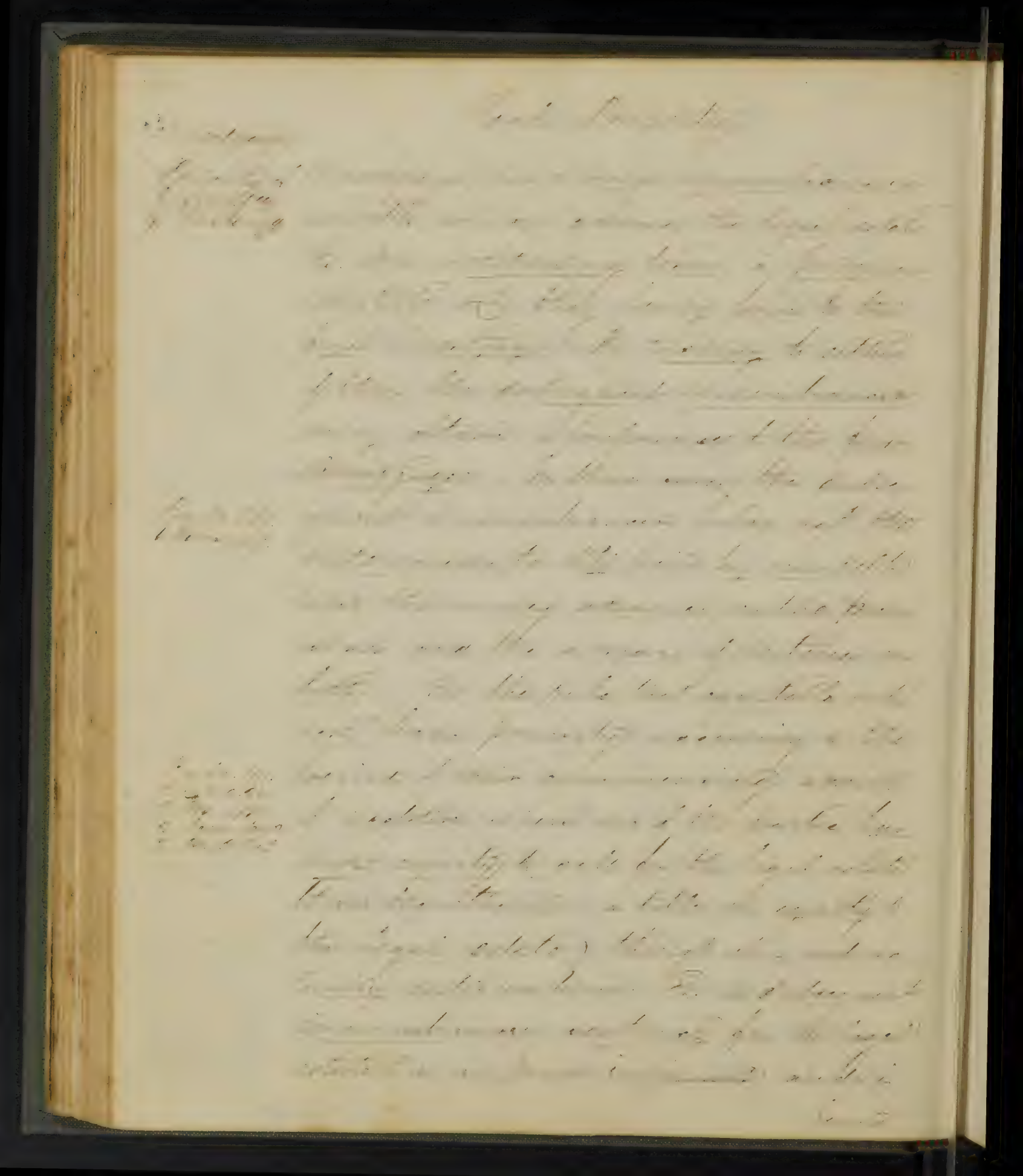
Cambr. USA
Table 15.

Form of Mortgage

Mortgage.

This Indenture made the [illegible] day of [illegible] in the year of our Lord one thousand eight hundred and [illegible] between [illegible] of the one part and [illegible] of the other part witnesseth that the said [illegible] for and in consideration of the sum of [illegible] lawful money of Great Britain to him in hand well and truly paid by the said [illegible] at or before the sealing and delivery of these presents the receipt whereof is hereby acknowledged [illegible] hath granted bargained sold aliened released enfeoffed and confirmed and by these presents doth grant bargain sell alien release enfeoff and confirm unto the said [illegible] his heirs and assigns forever all that [illegible] and also all the estate right title interest property claim and demand whatsoever of him the said [illegible] of in or to the same premises and every part and parcel thereof with the appurtenances To have and to hold the said [illegible] and premises hereby granted or mentioned and intended so to be with their and every of their appurtenances unto the said [illegible] his heirs and assigns forever to the only proper use and behoof of the said [illegible] his heirs and assigns forever Provided always nevertheless that if the said [illegible] his heirs executors administrators or assigns shall pay unto the said [illegible] his executors administrators or assigns the full sum of [illegible] of lawful money of Great Britain with interest for the same at the rate of [illegible] per centum per annum on the [illegible] day of [illegible] which will be in the year of our Lord one thousand eight hundred and [illegible] without any deduction defalcation or abatement whatsoever for taxes charges or assessments then these presents and every clause matter and thing herein contained shall cease determine and be utterly void to all intents and purposes anything herein contained to the contrary notwithstanding And it is hereby declared and agreed by and between the said parties to these presents that the said [illegible] his heirs executors administrators or assigns shall and will during the continuance of this security well and sufficiently repair and keep in repair all and every the buildings and improvements which now are or hereafter shall be erected upon the said premises hereby granted or mentioned and intended so to be and that it shall and may be lawful to and for the said [illegible] his heirs executors administrators or assigns from time to time and at all times hereafter during the continuance of this security to enter into and upon the said premises hereby granted or mentioned and intended so to be and every part thereof and to view and examine the state and condition thereof and of all buildings and improvements thereon and in case the said [illegible] his heirs executors administrators or assigns shall not within [illegible] days next after notice in writing for that purpose given to him or them by the said [illegible] his executors administrators or assigns well and sufficiently repair and amend the same that then it shall and may be lawful to and for the said [illegible] his executors administrators or assigns to enter upon the said premises and to repair and amend the same at the proper costs and charges of the said [illegible] his heirs executors administrators or assigns and the said costs and charges shall be added to the principal money hereby secured and shall be payable with interest at the rate aforesaid And it is hereby declared and agreed by and between the said parties to these presents that the said [illegible] his heirs executors administrators or assigns shall and will during the continuance of this security pay all taxes rates duties assessments and impositions whatsoever which now are or hereafter shall be charged assessed or imposed upon the said premises hereby granted or mentioned and intended so to be or upon the said [illegible] his executors administrators or assigns in respect thereof And it is hereby declared and agreed by and between the said parties to these presents that the said [illegible] his heirs executors administrators or assigns shall and will during the continuance of this security keep the buildings and improvements which now are or hereafter shall be erected upon the said premises hereby granted or mentioned and intended so to be insured against loss or damage by fire in the sum of [illegible] at least in some office or offices to be approved of by the said [illegible] his executors administrators or assigns and will assign the policy or policies of such insurance and will deposit the same with the said [illegible] his executors administrators or assigns and will pay all premiums and sums of money necessary for keeping the same insurance on foot and in case the said [illegible] his heirs executors administrators or assigns shall neglect or refuse to insure the said buildings and improvements as aforesaid or to assign the policy or policies of such insurance and deposit the same with the said [illegible] his executors administrators or assigns or to pay all premiums and sums of money necessary for keeping the same insurance on foot then and in every such case it shall and may be lawful to and for the said [illegible] his executors administrators or assigns to insure the said buildings and improvements in the sum aforesaid and to pay all premiums and sums of money necessary for keeping the same insurance on foot and all sums of money so paid by the said [illegible] his executors administrators or assigns for insurance shall be added to the principal money hereby secured and shall be payable with interest at the rate aforesaid And it is hereby declared and agreed by and between the said parties to these presents that the said [illegible] his heirs executors administrators or assigns shall and will during the continuance of this security keep the buildings and improvements which now are or hereafter shall be erected upon the said premises hereby granted or mentioned and intended so to be insured against loss or damage by fire in the sum of [illegible] at least in some office or offices to be approved of by the said [illegible] his executors administrators or assigns and will assign the policy or policies of such insurance and will deposit the same with the said [illegible] his executors administrators or assigns and will pay all premiums and sums of money necessary for keeping the same insurance on foot and in case the said [illegible] his heirs executors administrators or assigns shall neglect or refuse to insure the said buildings and improvements as aforesaid or to assign the policy or policies of such insurance and deposit the same with the said [illegible] his executors administrators or assigns or to pay all premiums and sums of money necessary for keeping the same insurance on foot then and in every such case it shall and may be lawful to and for the said [illegible] his executors administrators or assigns to insure the said buildings and improvements in the sum aforesaid and to pay all premiums and sums of money necessary for keeping the same insurance on foot and all sums of money so paid by the said [illegible] his executors administrators or assigns for insurance shall be added to the principal money hereby secured and shall be payable with interest at the rate aforesaid And it is hereby declared and agreed by and between the said parties to these presents that the said [illegible] his heirs executors administrators or assigns shall and will during the continuance of this security keep the buildings and improvements which now are or hereafter shall be erected upon the said premises hereby granted or mentioned and intended so to be insured against loss or damage by fire in the sum of [illegible] at least in some office or offices to be approved of by the said [illegible] his executors administrators or assigns and will assign the policy or policies of such insurance and will deposit the same with the said [illegible] his executors administrators or assigns and will pay all premiums and sums of money necessary for keeping the same insurance on foot and in case the said [illegible] his heirs executors administrators or assigns shall neglect or refuse to insure the said buildings and improvements as aforesaid or to assign the policy or policies of such insurance and deposit the same with the said [illegible] his executors administrators or assigns or to pay all premiums and sums of money necessary for keeping the same insurance on foot then and in every such case it shall and may be lawful to and for the said [illegible] his executors administrators or assigns to insure the said buildings and improvements in the sum aforesaid and to pay all premiums and sums of money necessary for keeping the same insurance on foot and all sums of money so paid by the said [illegible] his executors administrators or assigns for insurance shall be added to the principal money hereby secured and shall be payable with interest at the rate aforesaid

Real Property



Real Property

Mortgage

Rights of mortgagee & mortgagor

as a pledge and as his absolute own
by a first mortgage executed in
fee simple conveyed it, subject
to the said mortgage at the time
of the grant & said to the mortgagor and
to his heirs and assigns forever subject
upon the condition that if the mortgagor
his heirs, executors, administrators or assigns
shall pay unto the said mortgagee
his executors, administrators or assigns the
sum of money mentioned in the condition
of the mortgage deed at the time
and place therein appointed for payment
thereof, then the mortgagee shall
reconvey the premises to the mortgagor
his heirs or assigns, or to such other
person as he shall direct, at the
cost and charges of the mortgagor
his heirs or assigns, and the mortgagee
shall execute a release of the premises
to the mortgagor his heirs or assigns
and shall deliver to him all deeds
and writings in his custody relating
to the premises only, and shall
enter into a covenant with the
mortgagor his heirs or assigns that
he has not done or suffered any
act whereby the premises may be
incumbered, and that he will
pay the money secured by the
mortgage deed and interest thereon
at the time appointed for payment
thereof, and in the mean time
shall keep down the interest
payable on all prior incumbrances
and perform all the covenants
on the part of the mortgagor
contained in such prior incumbrances
and will indemnify the mortgagor
his heirs and assigns against
the same and all costs, charges
and expenses to be incurred by
him or them on account thereof
and that he will not call in
the money secured by the mortgage
deed before the time appointed
for payment thereof, unless
default shall be made in payment
of the interest thereof, or in
the performance of some of the
covenants on the part of the
mortgagor contained in the
mortgage deed, and that
the mortgagee shall be
at liberty to enter upon
and take possession of the
premises, and to receive
the rents and profits
thereof, and to apply
the same in payment
of the interest and
principal money
secured by the
mortgage deed
and the costs
and expenses
incurred by
him in
respect
thereof,
and that
the mort-
gagee
shall
pay the
surplus
(if any)
unto the
mortgagor
his heirs
or assigns
and that
the mort-
gagee
shall
not
sell
the
mort-
gaged
premises
without
giving
him
six
months
notice
of his
intention
so to do
or
calling
upon
him
to pay
the
money
secured
by the
mortgage
deed
and that
the mort-
gagee
shall
not
sell
the
mort-
gaged
premises
unless
default
shall
be made
in
payment
of the
money
secured
by the
mortgage
deed
for
the
space
of
six
months
after
such
notice
as
aforesaid
or
unless
default
shall
be made
in
payment
of the
interest
thereof
for
the
space
of
one
year
after
the
same
shall
become
due
and
that
the

Deed Contents

Mortgage

Equity of redemption

Mortgagor

Mortgagee

Equity of redemption

Mortgagor

Mortgagee

Equity of redemption

Mortgagor

Mortgagee

Equity of redemption

Mortgagor

Mortgagee

Real Contracts

mortgage

Priority of Incumbrances

An equitable mortgage with a deposit shall have priority. An equitable mortgage by deposit of deeds relating to the estate will have priority over the legal title in the case of a subsequent mortgage with notice. But the bona fide purchaser without notice of the former mortgage will have priority over the equitable mortgage. For the legal title is an advantage in equity; for though the conveyance be defective in law yet it conveys a good title in equity. And it is very clear that the former mortgagee is protected in equity. But a deposit of deeds will be enforced in equity against creditors, who have only general and not specific liens on the land, as against subsequent equitable mortgagees. They did not originally have the land in security and they cannot in virtue of

S. v. Sh. 3 Bro. C. C. 2 P. Wms. 484. 1 Ves. Sen. 564. Coll. 449.

in

Real Property

Mortgages

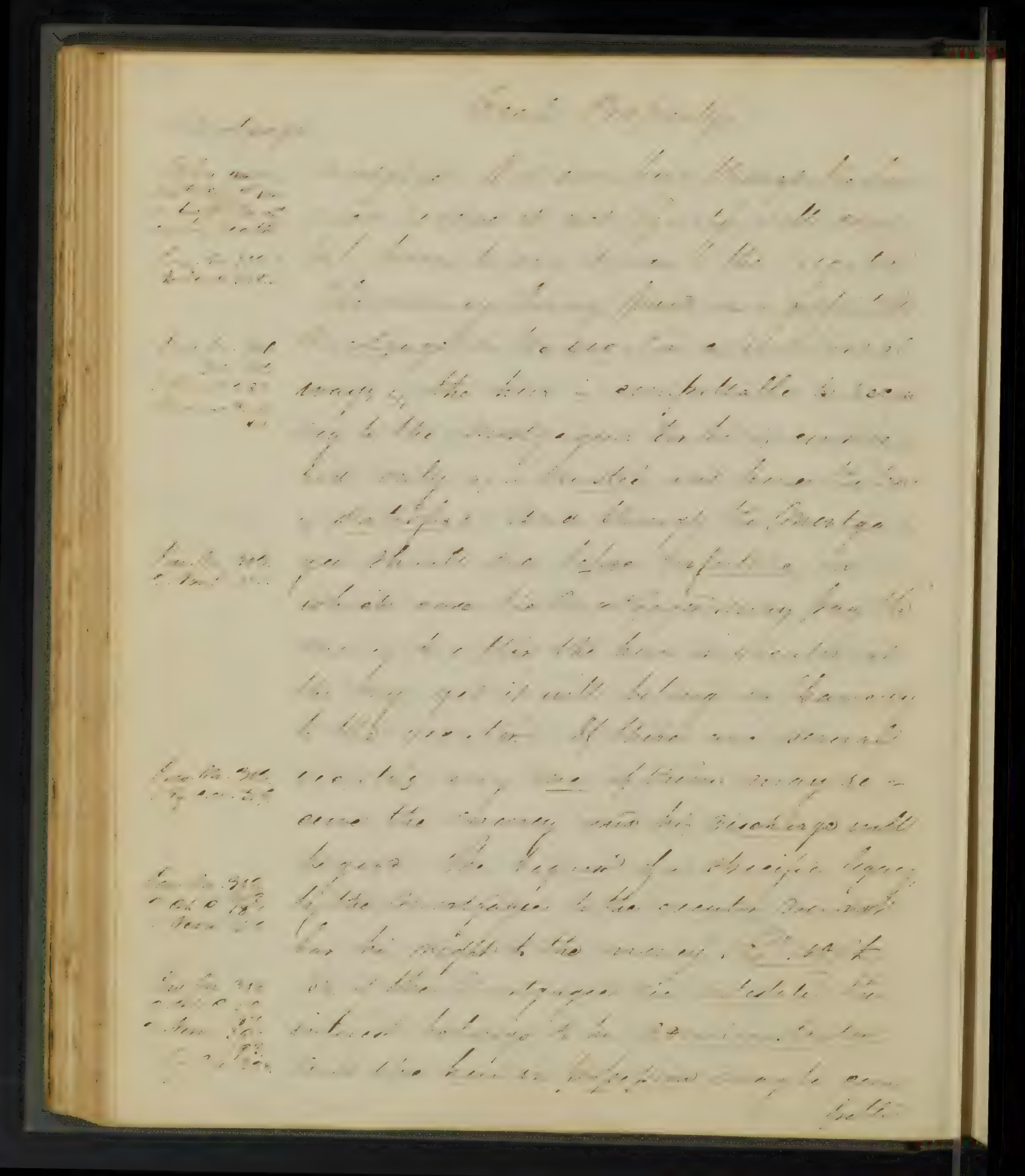
Security taken by lease to evade
provisions
of Statute.

The Courts of Equity are therefore
disposed to treat the Mortgagee
as the Mortgagor & Mortgagor
as Mortgagee

If the Mortgagor and creditor
a clause making the loan a security
& a future loan, short loan, call loan
relating to and be taken as part of the
original contract. Therefore they will
be treated as an intermediate
mortgage if the bankrupt at the
time of making the subsequent loan
[illegible] mortgagee
will be preferred [illegible]
[illegible] number of the
[illegible] mortgagee has notice of the claim
[illegible] creditor
entitled to [illegible] [illegible]
than the [illegible] to the general
creditors [illegible] the [illegible]
[illegible]

Cas. Pr. 270.
1 Atk. 490.
2 Ves.







Cruise Dig. 3d. 1. Sect. 1 pl.

Fonb. Eq. B. 1. Ch. 4. Sect. 2.

Fonb. Eq. B. 1. Ch. 4. Sect. 2.

Fonb. Eq. B. 1. Ch. 4. Sect. 2.

Fonb. Eq. B. 1. Ch. 4. Sect. 2.

Fonb. Eq. B. 1. Ch. 4. Sect. 2.

Fonb. Eq. B. 1. Ch. 4. Sect. 2.

2

Cas. t. Sir
Vol. C 119

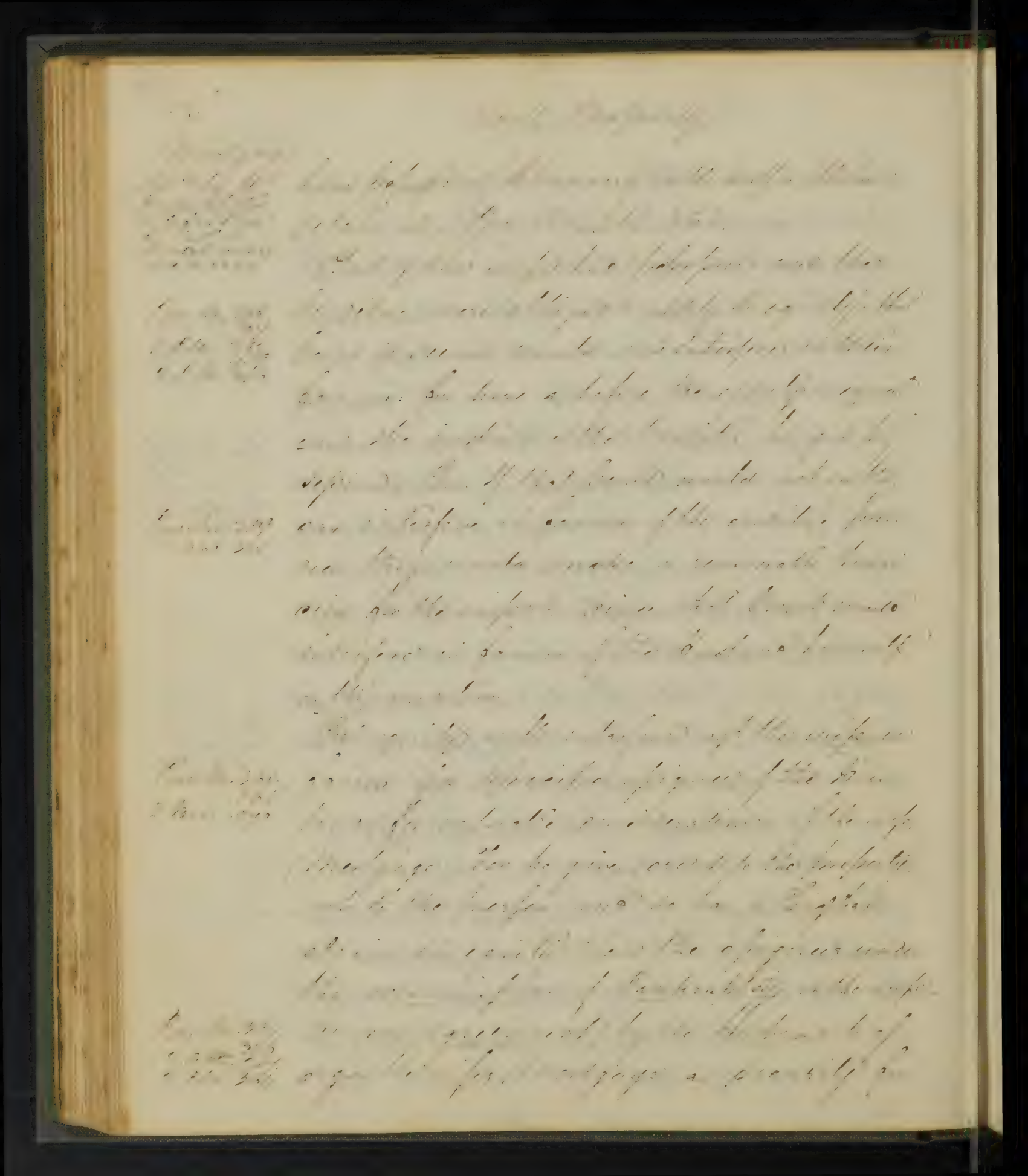
Real Property

Real Property

Mortgages

Husband's Property

his personal estate shall be applied in
discharge first thereof the rents issues &
profits thereof, and the residue of the
personal estate shall be applied in
discharge of the principal thereof; and
if such personal estate be insufficient to
discharge the same, and any debts shall
remain unsatisfied, then the rents issues
profits of the real estate shall be applied
in discharge of such debts, and if the
rents issues & profits of the real estate
shall be insufficient to discharge the
same, then the husband shall be
liable to discharge the residue thereof
out of his own estate, and if the husband
shall die before the wife, and the rents
issues & profits of the real estate
shall not be sufficient to discharge the
debts of the wife, then the husband
shall be liable to pay the same



mortgagee
Cant. Ch. that
land shall be
assumed as
security.

personal [illegible] of the real
estate of the testator as a charge
& charged with the payment of debts out
of the personal estate or upon the rents
& profits of the real estate is
vested "by the deed" of the proprietary
of the [illegible] land in such ch-
ildren in case of the death of the mortga-
gee as in his real estate which in both
the cases aforesaid is subject to the
real estate of the mortgagor but
in his estate the personal estate
will be first applied to all debts &c.
[illegible] the mortgagee were remained
to be paid by the mortgagor.

Com. Ch. 378 b.
1 Fon. 203.
1 Eq. Cas. Ab. 203.
2 Vern. 718.
2 Ca. Ch. 27.
Pr. Ch. 201.

And the rule that the personal fund
shall be applied to discharge the
real estate is confined to private
debts, & does not extend to the purchase
of the testator's original estate
[illegible] of the mortgagee
[illegible] the ordinary course of

Com. Ch. 380 b

the real

Real Estate

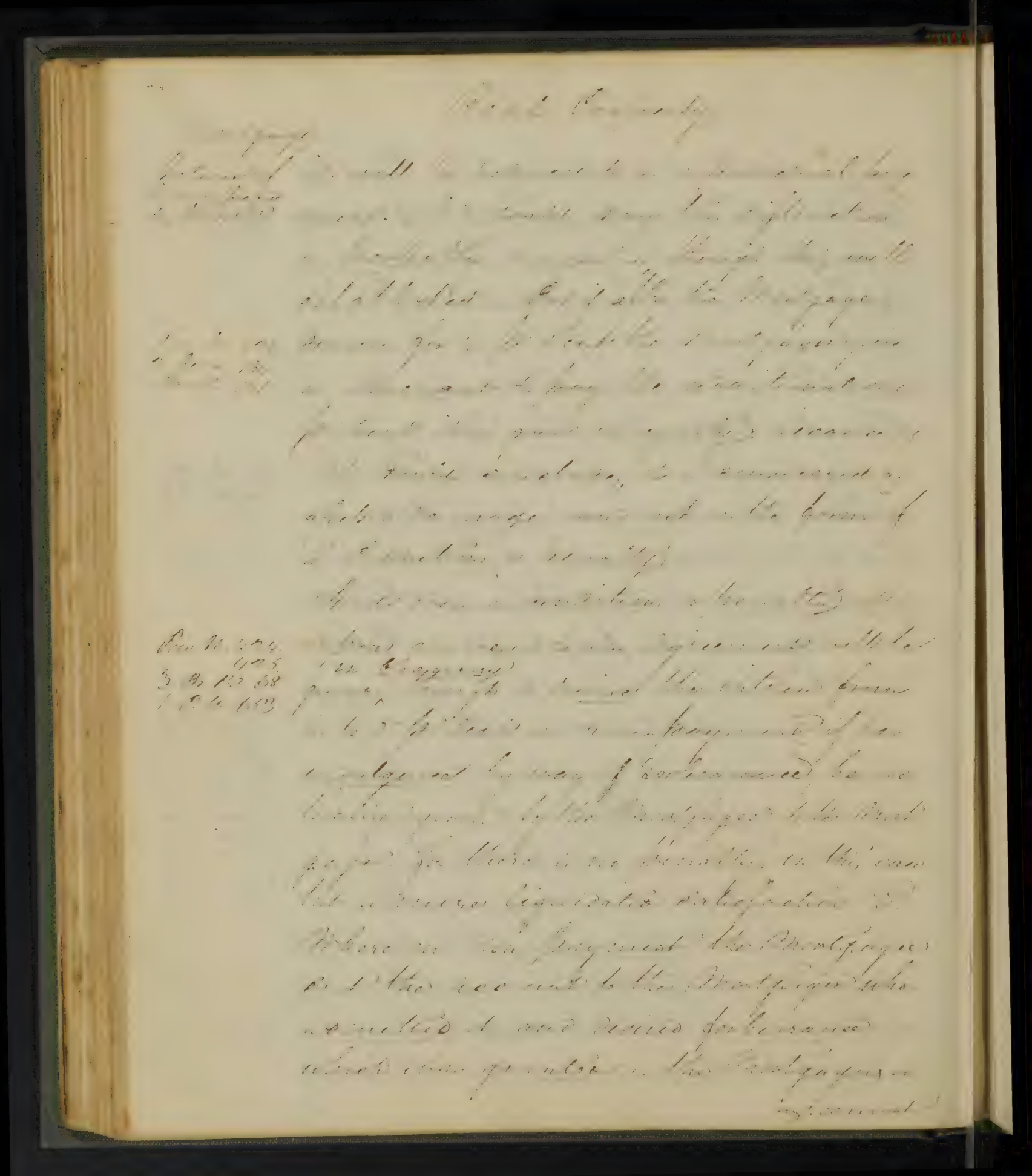
Mortgages.

Com. in. 384 384.

Com. in 386. Cal. 386 1 Ed. 386. 387.

Com. in 386. 386. 387.

Mortgage not forfeited to be revoked on Mort.r's death



Real Property

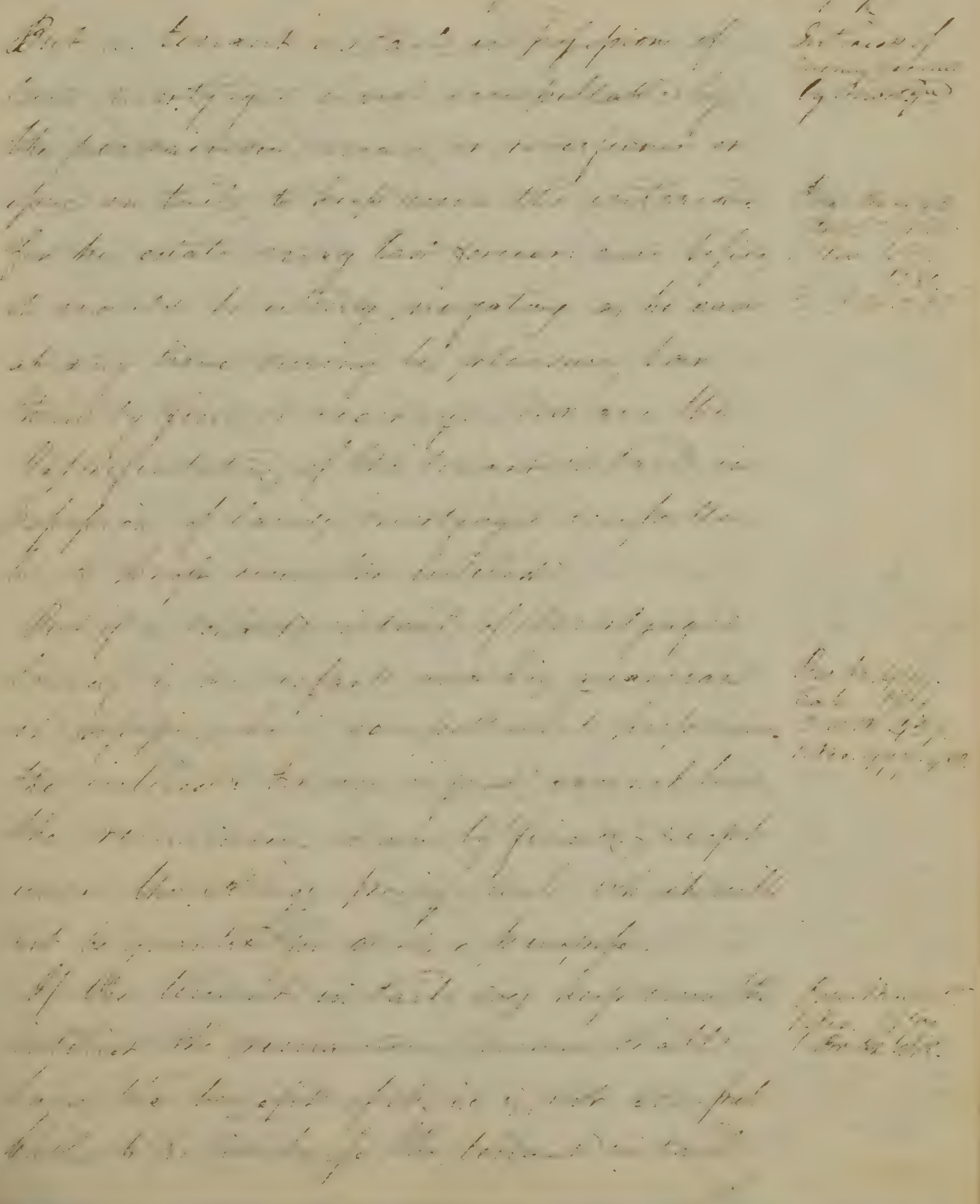
agreement to pay the additional sum upon
such terms had been agreed on specially
(upon payment whereof the latter) re-
leased to convey the premises by agree-
ment cannot be enforced either in law
or equity: the former is not entitled
nor, until after the latter is from the
penalty. But if the mortgagee assigns
his mortgage with the covenant
upon payment of the mortgage at the time
fixed in the assignment which was
due to the mortgagee, shall be consid-
ered as principal and draw interest

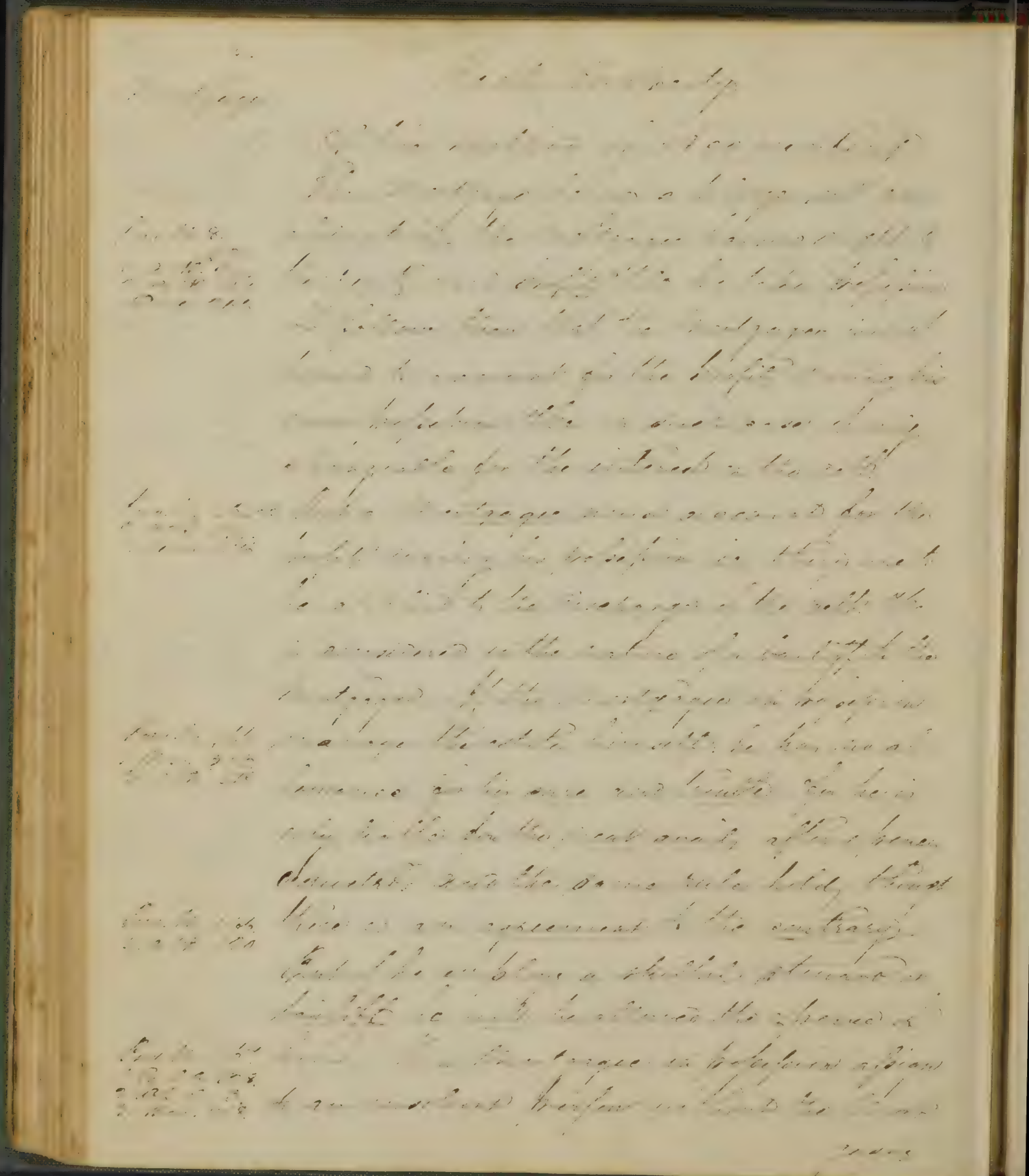
Mortgage
Release
covenant
to convey

Barbour
p. 37.
Ch. Ca. 116.
2 Vern. 744.
Ante 653.

Real Property

Mortgages





Of Contents

Mortgages

Mortgagees against the Mortgagor after Payment Mortgagee

shall be forth with [illegible] after Payment Mortgagor

mortgaged premises to the Mortgagor or to such Mortgagor

Creditor as the Mortgagor shall direct and appoint

Com. Dig. Chancery 4 Vol. 96. 1 Vern. 408. 2 Ch. Ca. 258. 1 Eq. Ca. Abr. 320. 3 Atk. 657.

Mortgagee shall be entitled to the Mortgaged premises

or the Money due thereon or both as the case may be

Mortgagee shall not be compelled to accept the Money

due on the Mortgage before the day appointed for

payment thereof nor shall the Mortgagor be entitled

to redeem the Mortgaged premises before the day

Real Property

Of Foreclosure.

In a Court of Chancery, after Forfeiture will in favour of the Mortgagor decree a redemption: so in favour of the Mortgagee the same Court will decree a foreclosure (ie, decree that unless the Mortgagor pays the debt within a limited time he shall be foreever barred of his equity of redemption, which was irrevocable except under special circumstances of hardship of the Mortgagor, & a decree to foreclose may be had for sake of the collateral security the debt bid is bearing the Legal Mortgage, & sale, & decree thereon. If a Mortgage, made to secure all it would be made heavier, on default in foreclosure as if a Mortgagee giving General Letter Mortgagee Mortgage & Court of equity will decree a foreclosure & bar forfeiture of the

Eq. 145-
2 Ch. 146

Eq. M. 465.
3 10.

Eq. Ca. 145-6.
1 Ca. Ch. 368.

Mortgage

Real Property

Mortgage

Foreclosure

Mortgage. Equity. Where the equity of redemption is sold with the mortgage as security at law, that is a sale in the law, that in a bill for foreclosure; the title of the mortgagee cannot be investigated, because title cannot be settled at law; they would then examine that the mortgagee cannot convey to the mortgagor: but that can never in such a case, with perfect his real title: he could have no duty to be settled at law. The decree only destroys the equity of redemption.

Com. Dig. Chancery 4 Y. 6 Chancery

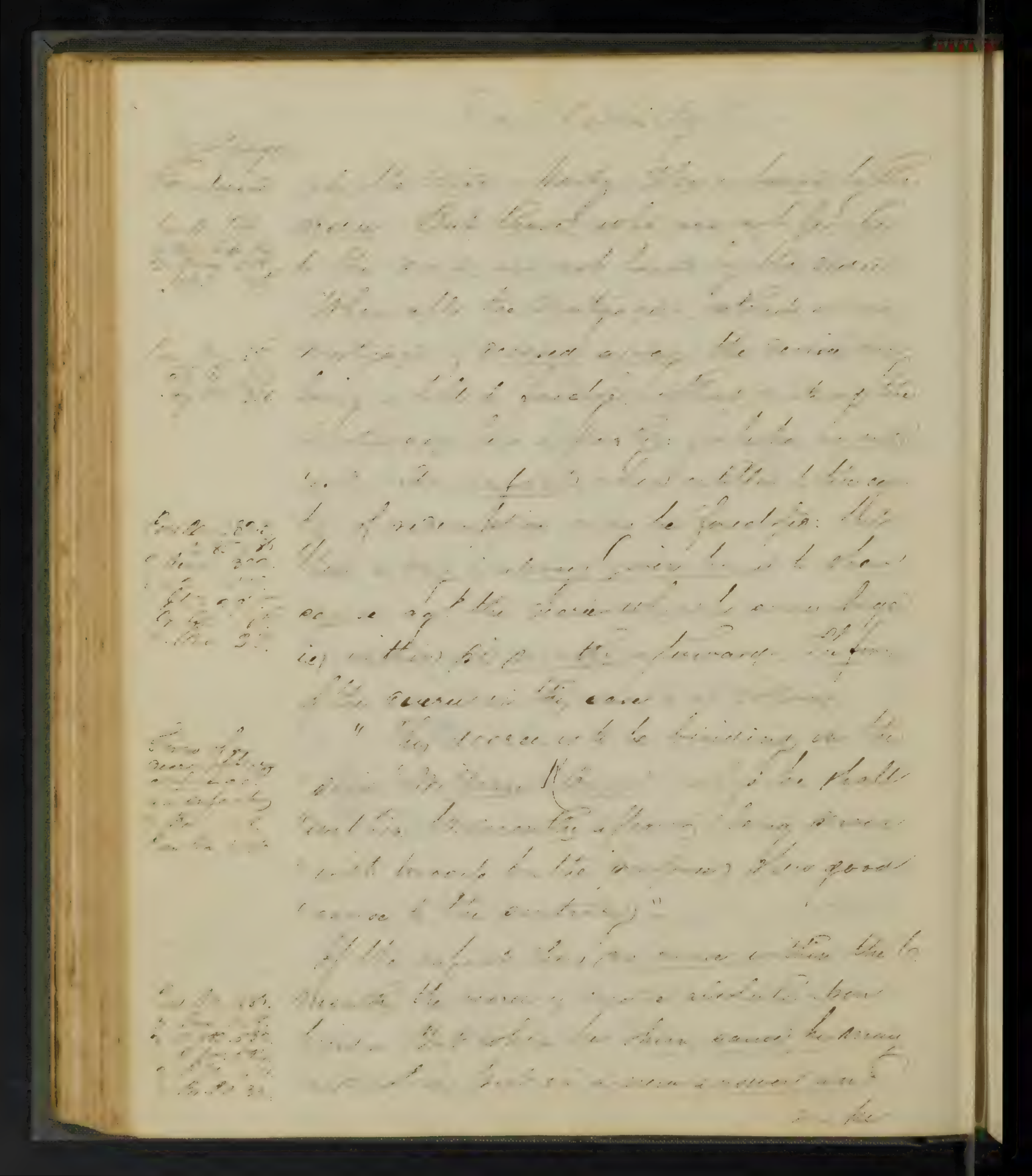
Com. Dig. Chancery 4 Y. 6 Chancery 2 Vern. 344.

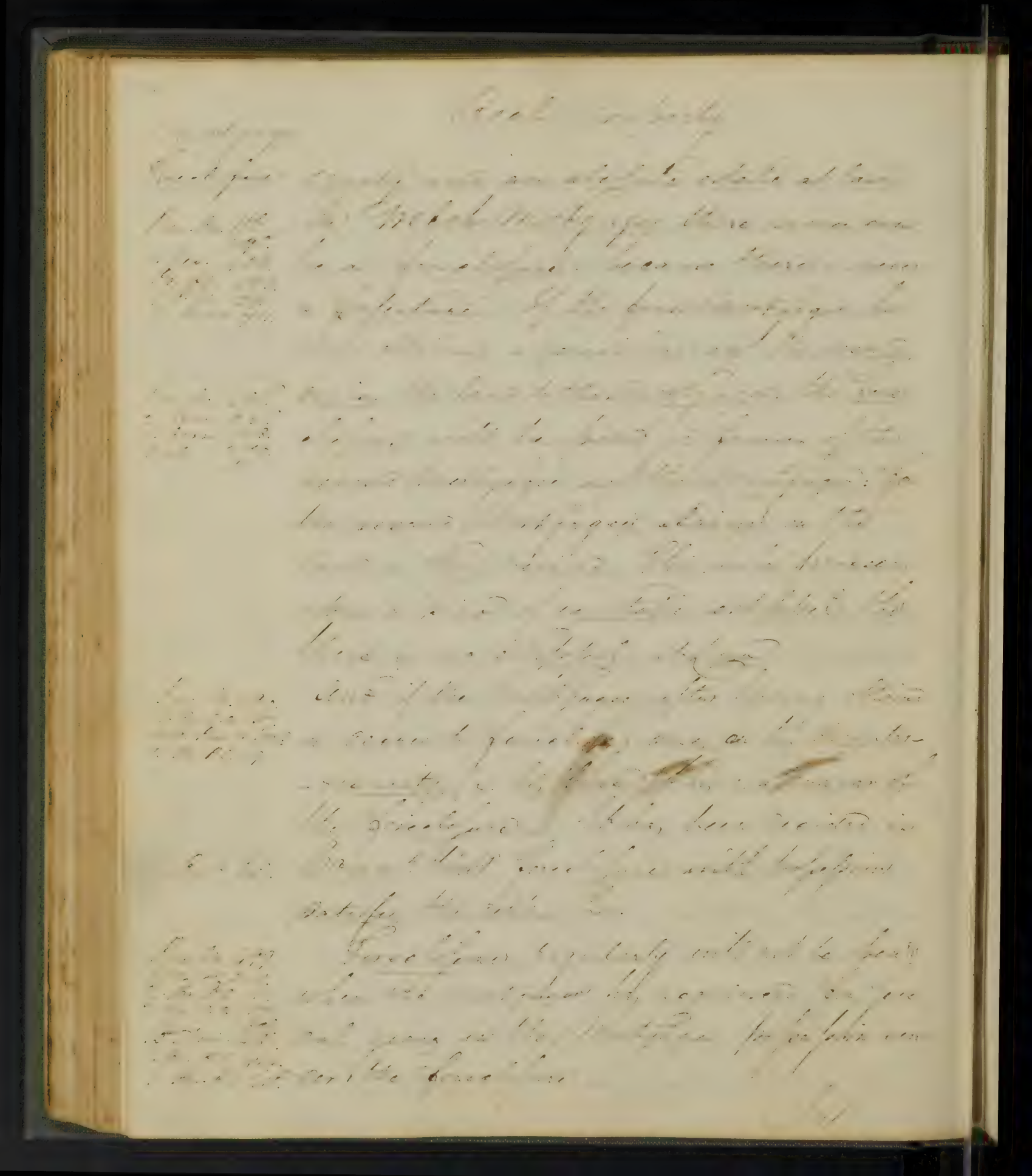
The mortgagee can never at his pleasure say, at the day of payment he may demand the title deeds of the land from the mortgagor or covenantee, and sue for them by his bill in Chancery: and in such a case after judgment at the court he may deny the question of the land mortgaged. Where the premises are of less value than the debt secured by the

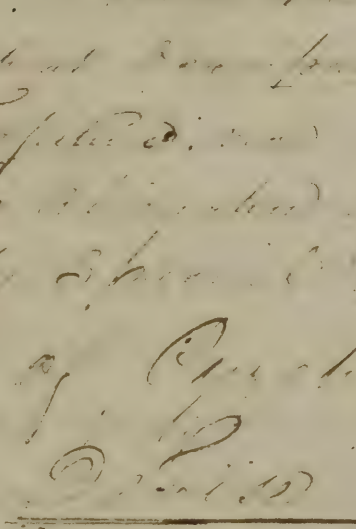
Mortgage

Mortgage
Foreclosure
See 4 Paige 8.
2 Barb 344.

circumstances, the Court will grant an injunction to stay proceedings on the ...
...
...







Devises.

Rights

Ct. of Exch.

Ct. of Exch.

Ct. of Exch.

Ct. of Exch.

Statutes.

Ct. of Exch.

Devises

Devise Contents

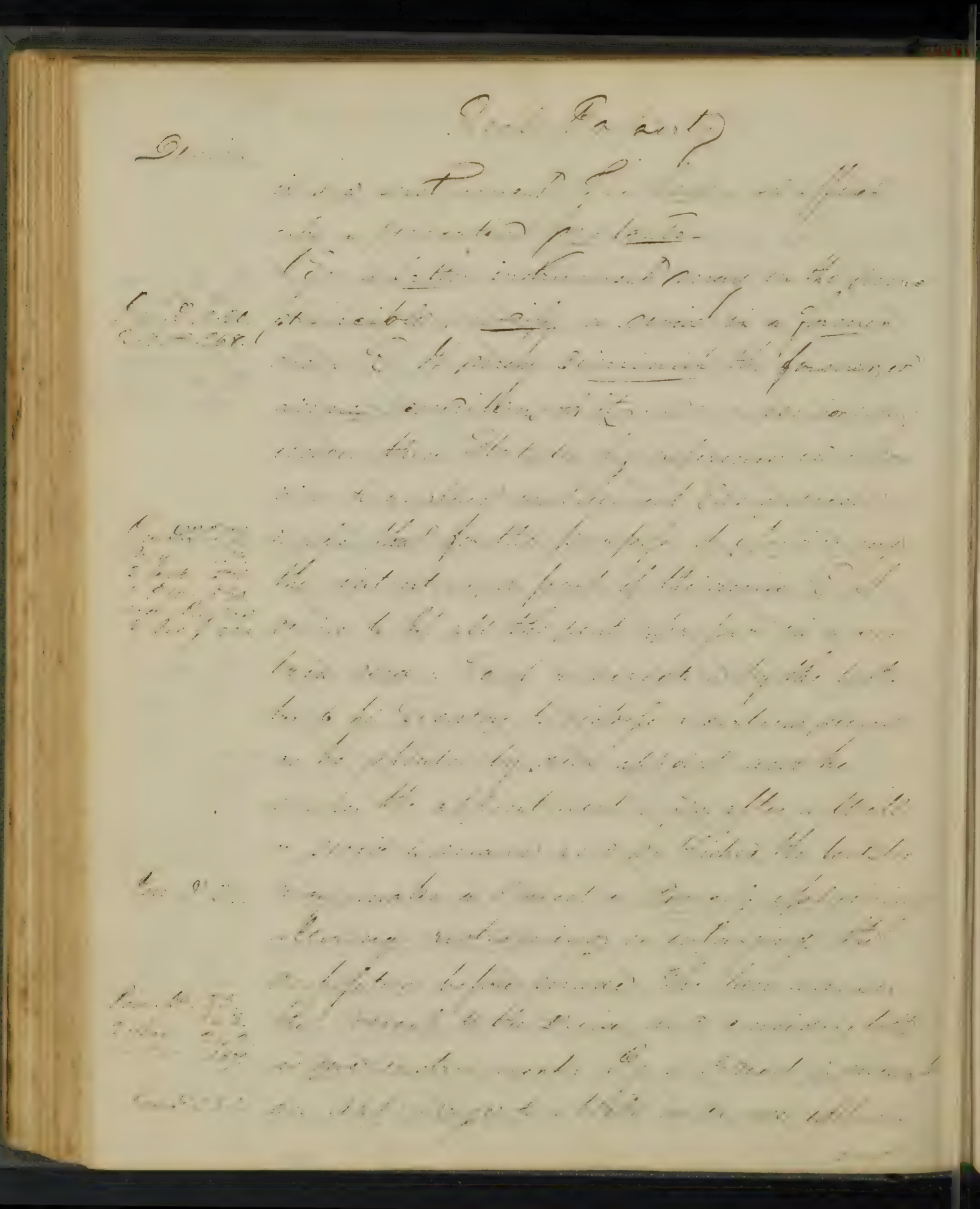
Between a deed & a devise a will may be written at different times — at different places — which need not be joined together — and then all contain to be but one will be construed. Co. Lit. 322. Cro. E. 15. 106. 108. 1 Roll. Abr. 836. 3. 1 Show. 96. Carth. 194. 1 Vern. 348. Prec. C. 116. pl. 1 Show. 345-353.

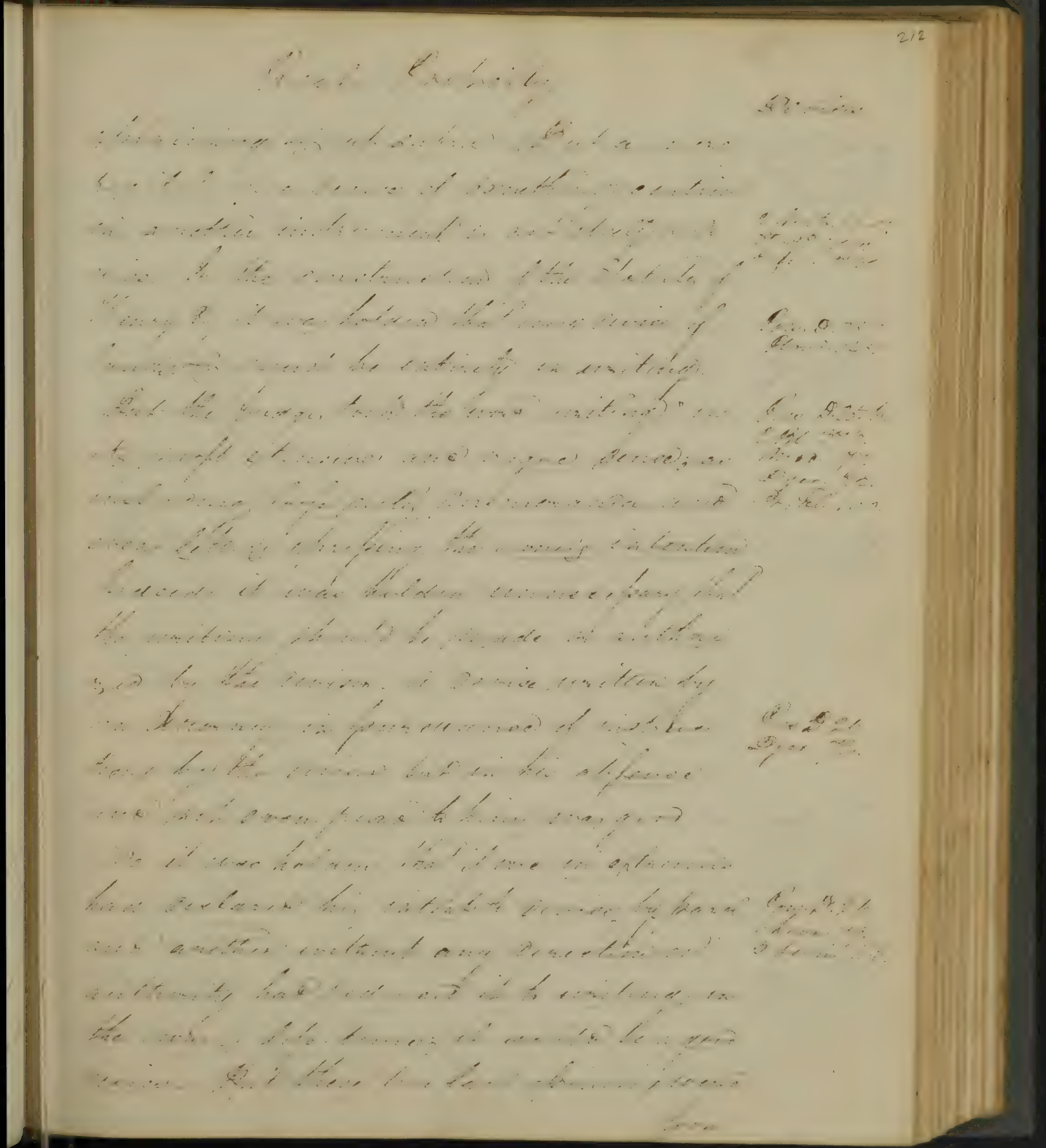
One devise one instrument devises Black. acre. one other instrument devises Black. acre to another White. acre, two several devises. & the last revokes the former devise. Cro. E. 15. pl. 19.

A devise generally of all the residue & residuary part of several parcels of his estate will pass all he has at the time of his death. Cro. E. 18. 1 Show. 339.

But specifically of the residue of his personal estate will pass only his personalty. but specifically of the residue of his personal estate will pass all his personalty & a part of his freehold.

One devise may create several estates of different interest in the same estate. E. devises it to the testators sons for life & his wife during widowhood the sons have an estate for life the remainder each & both the sons have but one estate for life remainder in common





Devise

Real Estate

Devise of Real Estate

Sec. 25. 8. 2 Ill. Stat.

Devise of Real Estate

Sec. 2. Stat. of Frauds

Devise of Real Estate

Sec. 2. Stat. of Wills

Devise of Real Estate

Real Estate

Real Property

Devise.

by the usual words; and if limited in his devise by three or more witnesses.

Stat. 1 Jac. 1. c. 3. s. 14.

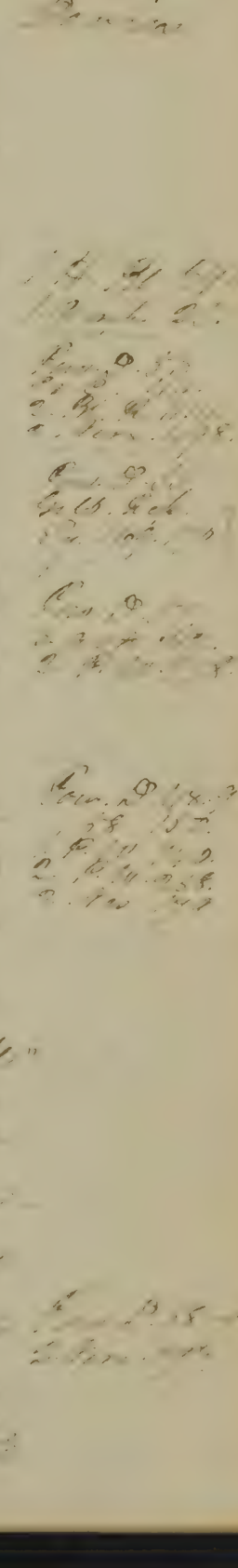
Our Stat. enacts that no estate of freehold shall be assigned devised or Real estate shall be held good if they are not attested by three witnesses all of them present at the execution of the testator. If by them substantially the same with the English except that there are other provisions made with respect to testator's signing. The devise to be known at the testator signing and the publication by the Court &c. The effect of these provisions is to prevent fraud in obtaining and to preserve testimony.

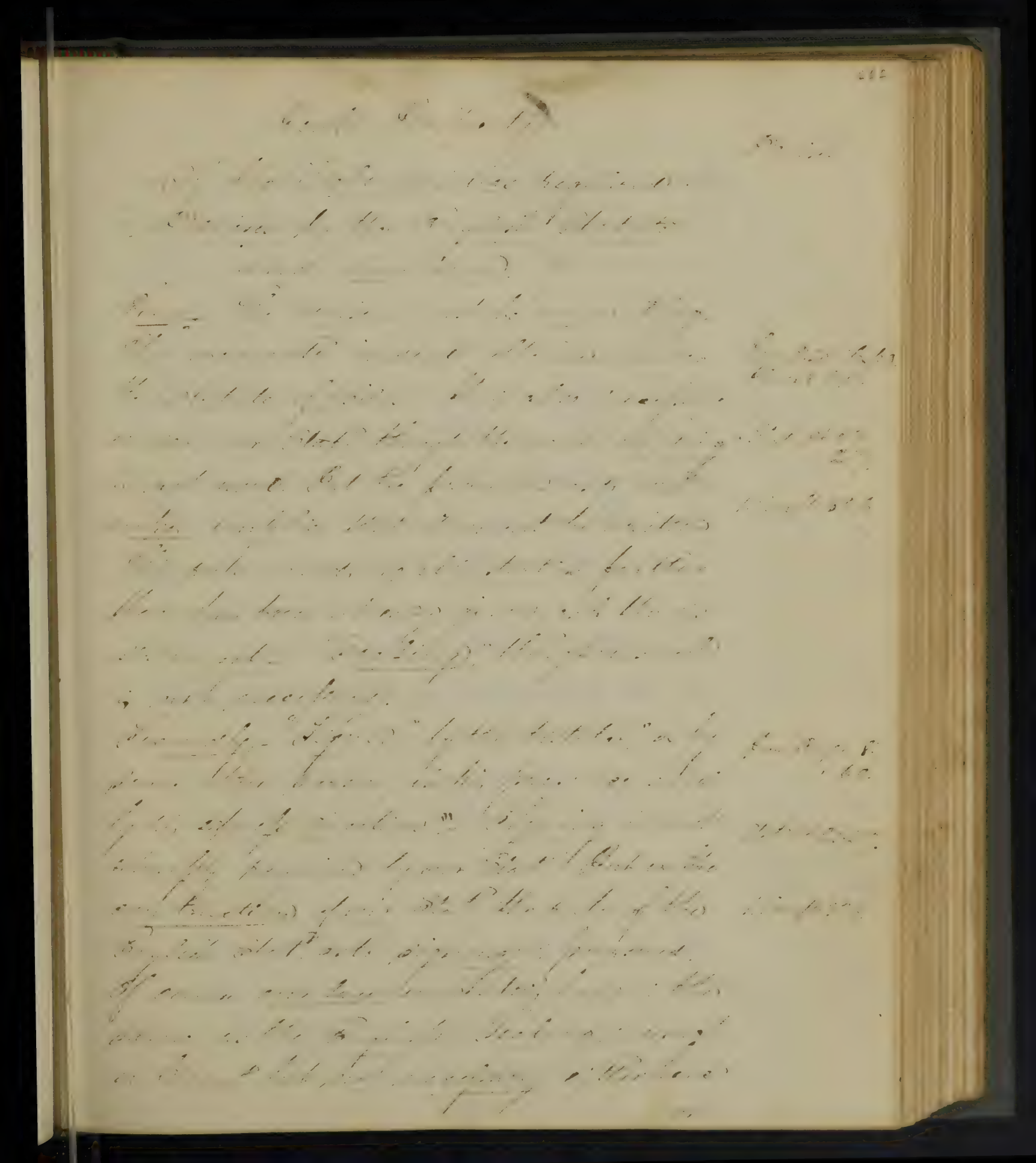
Ca. P. 45.

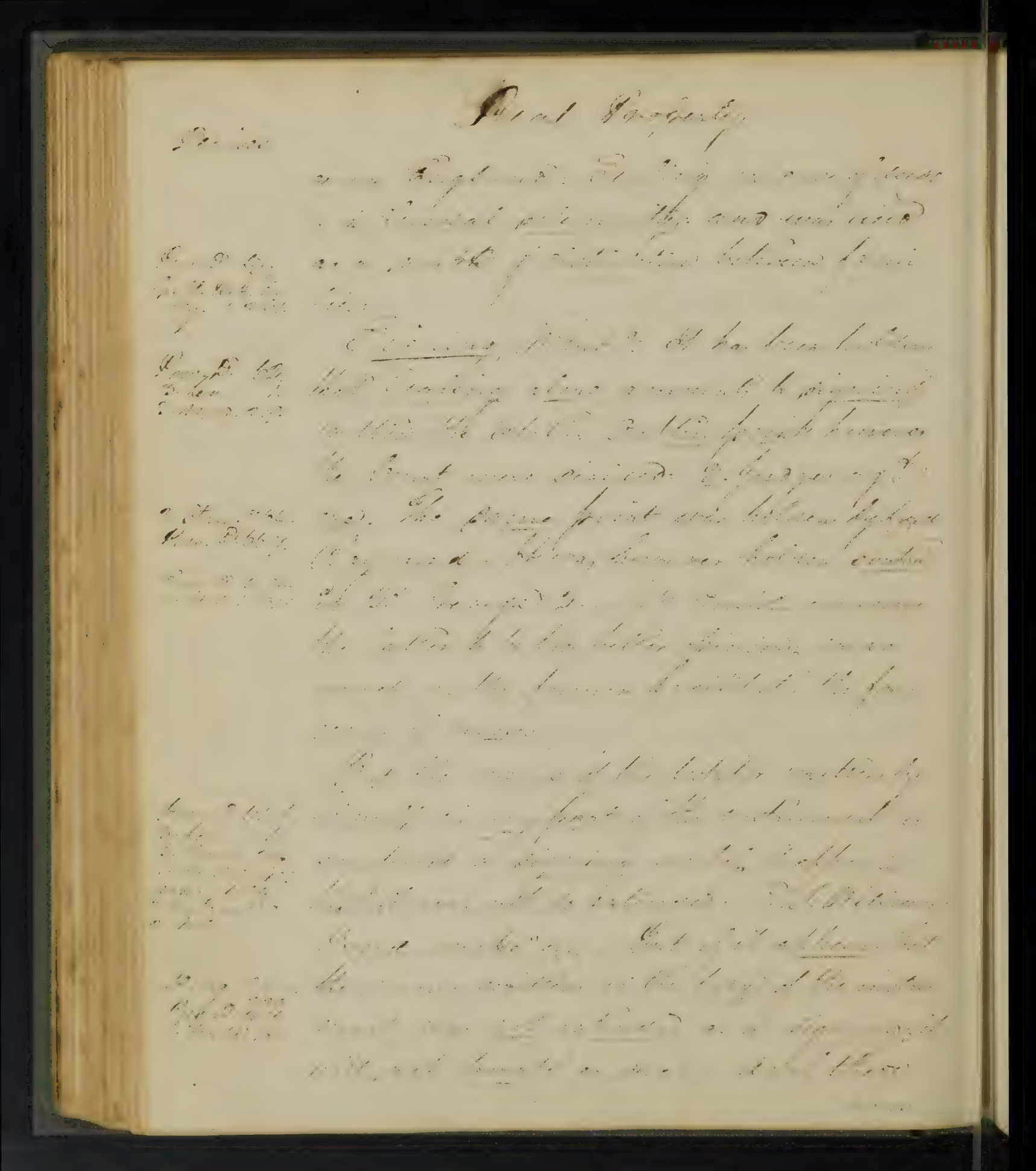
"Of devises" &c. — No person being a free person may devise land in the State of Georgia by any writing unless same be signed by a person under the state of Georgia will unless the same be signed by the testator

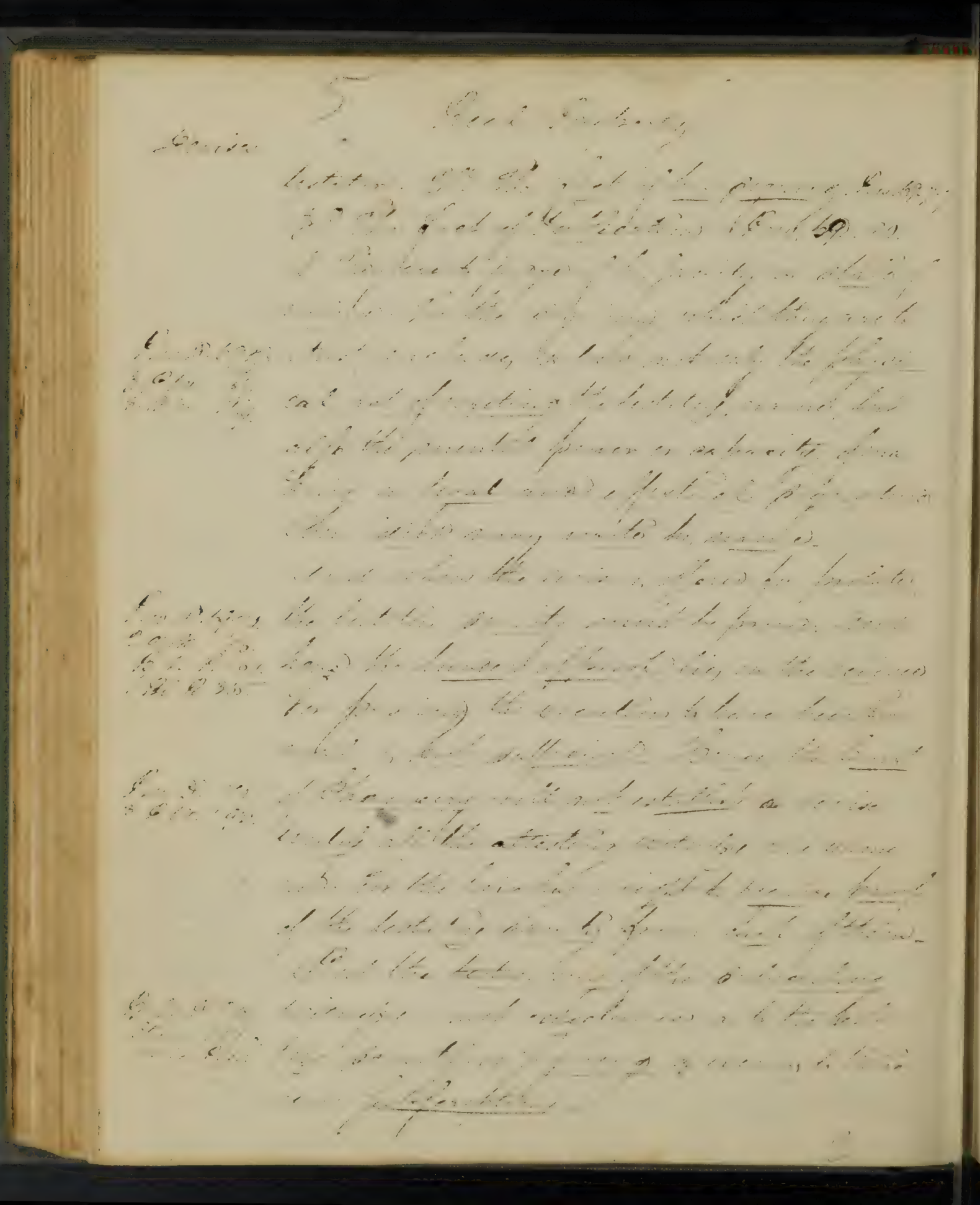
Ca. D. 8.

Form of Probate











Court Records

Term

Bail to answer false return. Recognizance
for a Writ of Habeas Corpus.

Put the prisoner named in the
Recognizance & the Witness & Jurors
& bail to answer accordingly & Jurors
Com. D. 664
Com. Dig.
Com. Ca. 38.

Proclamation that the rebels should have
a speedy & entire time of absentation: Writ
in general grant, one Witness & attor-
ney by analogy, who never for the state
or any part could appear. Put another there
is a positive proof but the whole true
not prevent the forgiveness from the ex-
ecutor: & the case presume that the
same presumption, a case given for their
absentation: & the Rebellion
& the Witness: Where been taken that
a case given a three Week's notice
not proved one could outlaw, Rebellion
on Oath; the Rebellion, sufficient
& if the Lord Chief in the last case come
dismissed upon a Habeas Corpus their
Recognizance

Lord Portsmouth

Demise

particulars above stated shall not be sufficient.

In the absence of the Testator.

Effect of words "Devise and bequeath" &c. if the property subject to power.

These words are sufficient to pass property subject to the power, whether the power be general or special, if the property subject to the power be not specifically mentioned, but the description is sufficient. So the words "I give and bequeath" in general terms pass property subject to power.

Powers of sale and exchange.

68.

Power to sell and exchange.

For if the testator might have been the better enabled by description or by reference: therefore he might have power to sell or exchange, and to give receipts for the money arising by sale, yet it is doubtful whether he can sell or exchange without express power for that purpose.

Power to sell.

Power to sell.

Power to sell.

Power to sell.

Real Property Act

Decision

testator might have been thought the
beneficiary intended by the testa-
tor, but not the name, under s. 88.
s. 3 Eliz. c. 14. In this clause it appears
intended to prevent not only fraud but any
mistake as to the identity of the instrument
of which the testator is invariable at the time
of the attestation, though ordinarily proved by
the attestation clause. For if proved
contrary to the attestation clause
also as to the making of the testament
A. though the attestation, in the Prerogative
Court under the testator's name of Richard
Cox was not of a testament wholly in
his own writing, it is
not sufficient. It is not in his hand
writing the meaning of the Act. In the
ignorant of the testament.
[illegible] the testator cannot subscribe as the
testator's name, yet the Court held the
subscription was in his presence, and
a sign as the face of the testament, &
a fact for the consideration of the jury

Deed Poll

Court of Equity

Devises

Devises to Executors in Trust to sell

1 Ves. 332. 2 Ves. Sen. 80.

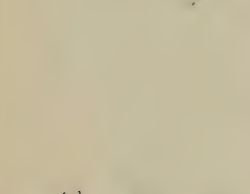
The case of Lord Aylesbury v. Lord Lord Keeper
Aylesbury in the House of Lords 1 Geo. 2nd. Cited D. 3. 6.
Where the Testator, after his Appointment
charged his Real Estate with Debts, and
directed that his Executors should sell the Testator's Real
Estate, but died before any Sale
was made, it was decided in Chancery
that the Executors had no Power to sell
the Estate, which descended to the Heir
at Law.

This Point was decided in Chancery Cited
in Lord Aylesbury's Case, contrary to the Opinion of Lord D. 3. 6.
Lord Keeper Wright.

See Cases stated by the Authorities Cases D. 122.
in the Margin on this Subject, page 138.

It was decided by the Lord Court of Exchequer Succession
in the Case of Chamberlain v. Lord Chamberlain
Torrington, that Money directed to be
laid out in Land, and settled to the Uses
of a Will, descended to the Heir at Law
and not to the Executor. This Decision was
however reversed by the House of Lords
on Appeal. This Case is reported in Cases
Temp. Talbot, and Mr. Peere Williams's Reports.
See also Lord Cowper's Case, 2 Vern. 748.
Prec. Ch. 557.
and Lord Thanet's Case, 2 Vern. 342.
Prec. Ch. 486.
and the Cases mentioned in Talbot.

Lord



Real Property

Devises

It is objected that the devisement hereinafter mentioned the Testatrix cannot pass 3 Bac. Ab. 498. Sty. 291.

Devises to persons not being to be named by the Testator to the Testator's Executors to sell & convey & pay the money arising by the sale to such persons as they shall think fit are void. 3 Bac. Ab. 498. Sty. 291.

Devise

Real Property

Devise

Real Property

Devise

will be void, unless the devisable be seised
and before the commencement, by the testa-
tor, of the commencement of the
of in the interpleter, and [illegible]. &
(Further Reference)

A devise of land, passed since the
[illegible] Rule is the rule as to Devises by custom
before the said Statute, & the devisee
devise, the estate by the [illegible]
to claim by the words of limitation
and the devisee by the words "Heirs and
Such" does there a real estate.
[illegible] under the Statute of
Frauds. Then are no express limitations
in these words, but tacitly by the St. of
Frauds, which tacitly contains words
[illegible] in power by [illegible]
[illegible] [illegible]
[illegible] & the said devisee
[illegible] of his land [illegible]
[illegible] [illegible]
[illegible] [illegible]

Deed Poll

Devise

Devise: This however was formerly Doubted
Law. R. 146. 1. Eq. C. a. 192. Park. 230.
A Testator gave Tenements unto Devisee
for life & if he died without issue: and the
words of the Will are general)
If a General Devise that A. shall have
and enjoy Lands which he has not at
the time of the devise but shall purchase
after (the time of the devise and before
death). It passes the Lands purchased
after the devise, for his Intent was at
the making his Will that A. should
have all the Lands he had at his death:
Now the Will
is not speak. As Lands is the Nature of
Things to come in succession & not to be
enjoyed at present & take effect in
Futuro. So Money cannot be devised
but Lands may. Devise of Residue
said to be void for uncertainty
the Lands: Yet it however in case of
an after purchased Lands for years. or
Lands in Mortgage)

Law. R. 143
2 Roll. Rep.
2 Roll. Rep.
2 Roll. Rep.
2 Roll. Rep.
2 Roll. Rep.
Cro. Eliz. 716

Co. 2 Rep.

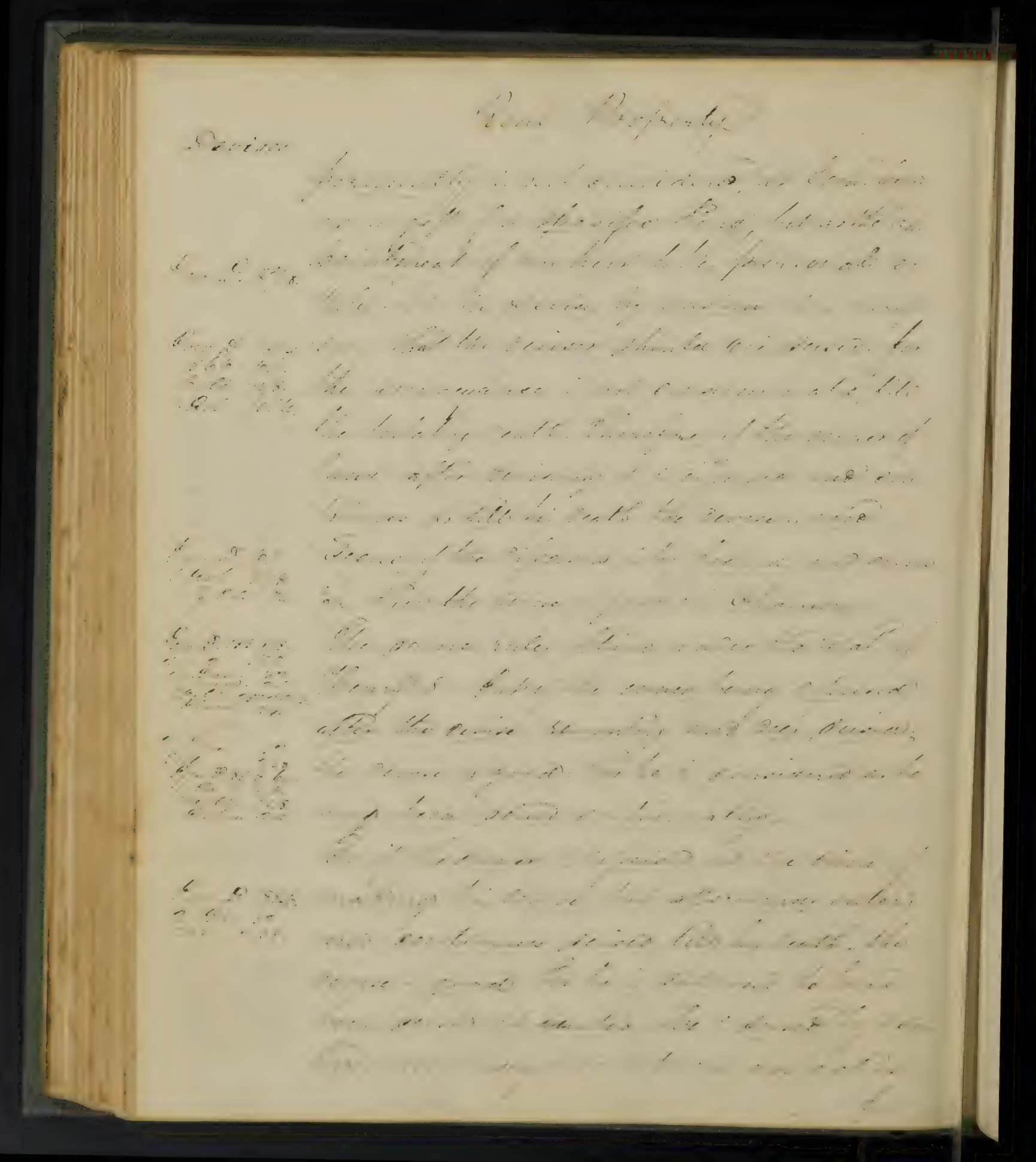
Co. 2 Rep.

Co. 2 Rep.

Law. R. 2
2 Roll. Rep.
3 Mod. 87
Sid. 357

a Term for

for all



Real Property

Devise

Devise

Devise

Devise

Devise

Devise

Power

Power

Power

Real Property

There are several estates of inheritance in lands called estates in fee simple & fee simple absolute. 2. Estates tail. 3. Estates for life. 4. Estates by Courtesy. 5. and the last is estates for widows and are confined to personal transactions. 6. The Assembly Conveyance.

All these are derived by the State of Georgia. The difference is made in the mode of acquiring them, and a distinction prevails there only between estates in fee simple & fee tail. Estates in fee simple may be alienated or not as pleased. Estates tail cannot be alienated or barred by any act of theirs, but have been always settled upon the first heir in tail. Fee simples and in reversion may be divided into 2 Species 1. Vested Remainders. 2. Contingent Remainders. Vested Remainders 1. Estate limited to a certain person at a certain day. Here interest is vested immediately in the heir, tho' the time of enjoyment is postponed

Allen

Real Property

Devise

A Real estate may be created by Devise. & Remainder in fee &c may be effected even devise in effect fee simple. A grant or devise to another for ever or in perpetuity will create a fee simple by act of the parties.

Fonb. D. 245 n. 1. Co. Lit. 6. b. 7. a. 1 Inst. 9.

Fonb. D. 245 n. 2 Com. Dig.

In case nothing is included for there is no limitation, by remainder or reversion may devise create a fee. tail

Fonb. D. 245 n. 3 Co. Lit. 8. Cr. C. 37 Ewl. 251

Tail - devise of a fee after an express a fee is good: & To a fee simple and if he die without heir to the fee - the first devisee takes by purchase, related to devise, remainder not by descent: and not

Fonb. D. 250 n. x

by descent: for by these the heirs were created. But the case the fee by way of remainder would be void to avoid a perpetuity: for the heirs

Fonb. D. 238. § marginal

take by descent & not by purchase

Fonb. D. 245 n. 270.

Devise to a person in esse at the time of the devise

&c

Dower

Can. D. 241.

Can. D. 241.

Can. D. 241. 6 Geo. 3. c. 35. 1 Geo. 3. c. 285. 2 Geo. 3. c. 20. 3 Geo. 3. c. 44. Can. 1792.

Can. D. 242 3. 32 Geo. 3. c. 1. Can. 1792.

Can. D. 244. 6 Geo. 3. c. 35.

Can. D. 245. 6 Geo. 3. c. 35. 3 Geo. 3. c. 44.

Can. D. 246. 6 Geo. 3. c. 35. 3 Geo. 3. c. 44.

Total Potential

Clause Conveyance

Recitals

of [illegible] the [illegible] [illegible]
[illegible] [illegible] of the legal estate [illegible] the [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible]
legal estate [illegible] [illegible]

Law Dict. I [illegible] [illegible] [illegible] between the said
[illegible] [illegible] [illegible] of the equitable estate [illegible] and
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] of a term [illegible] equity
[illegible] [illegible] [illegible] [illegible] to be taken as [illegible]

Law Dict 288. when the legal title [illegible] vested in some
[illegible] for [illegible] [illegible] [illegible] [illegible]

Law Dict 244. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Law Dict 244. [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

Law Dict 244 [illegible] [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]
[

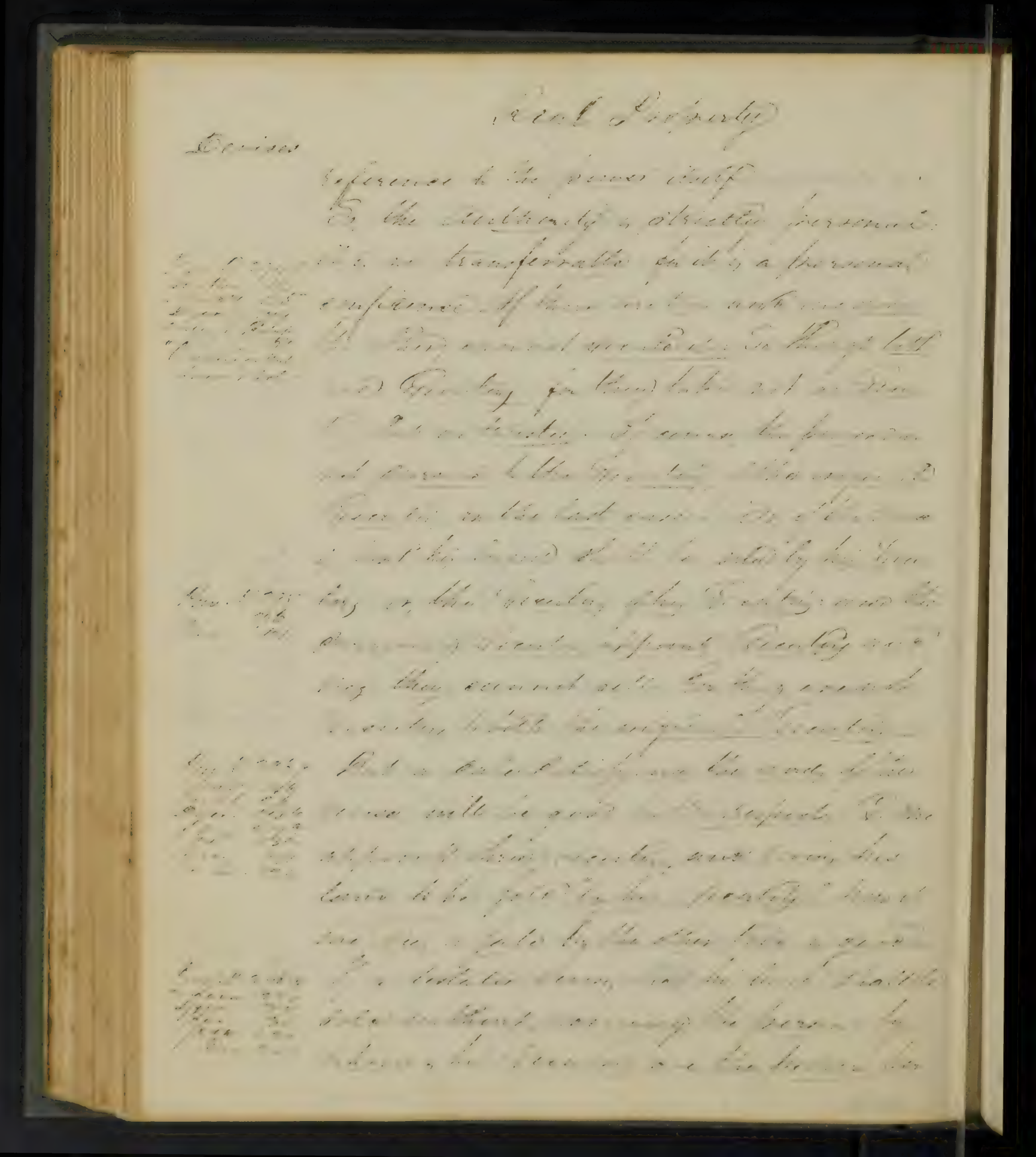
Land Estate

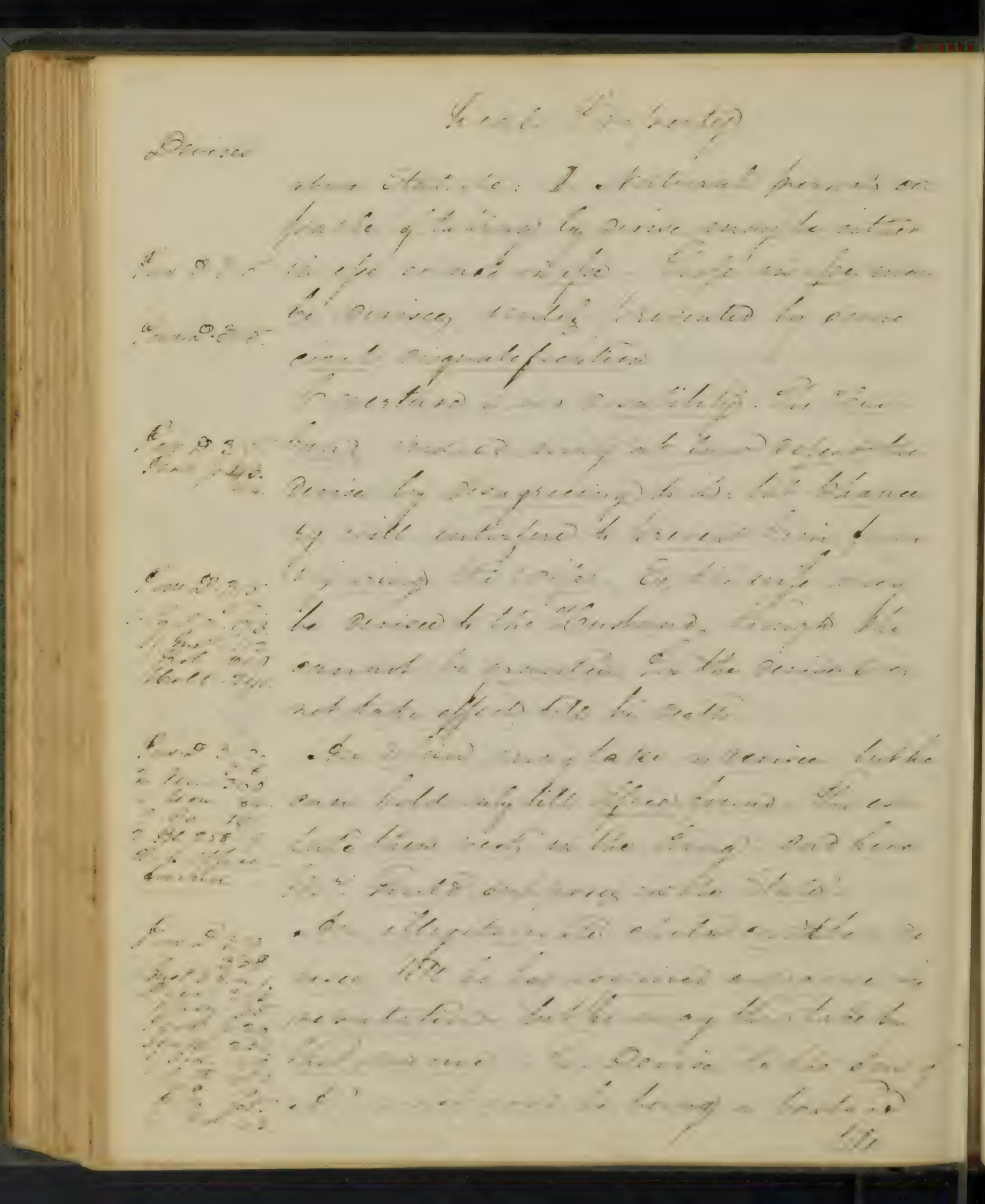
Power,

A. take all the real estate necessarily, Testamentary powers over lands, are of two kinds.

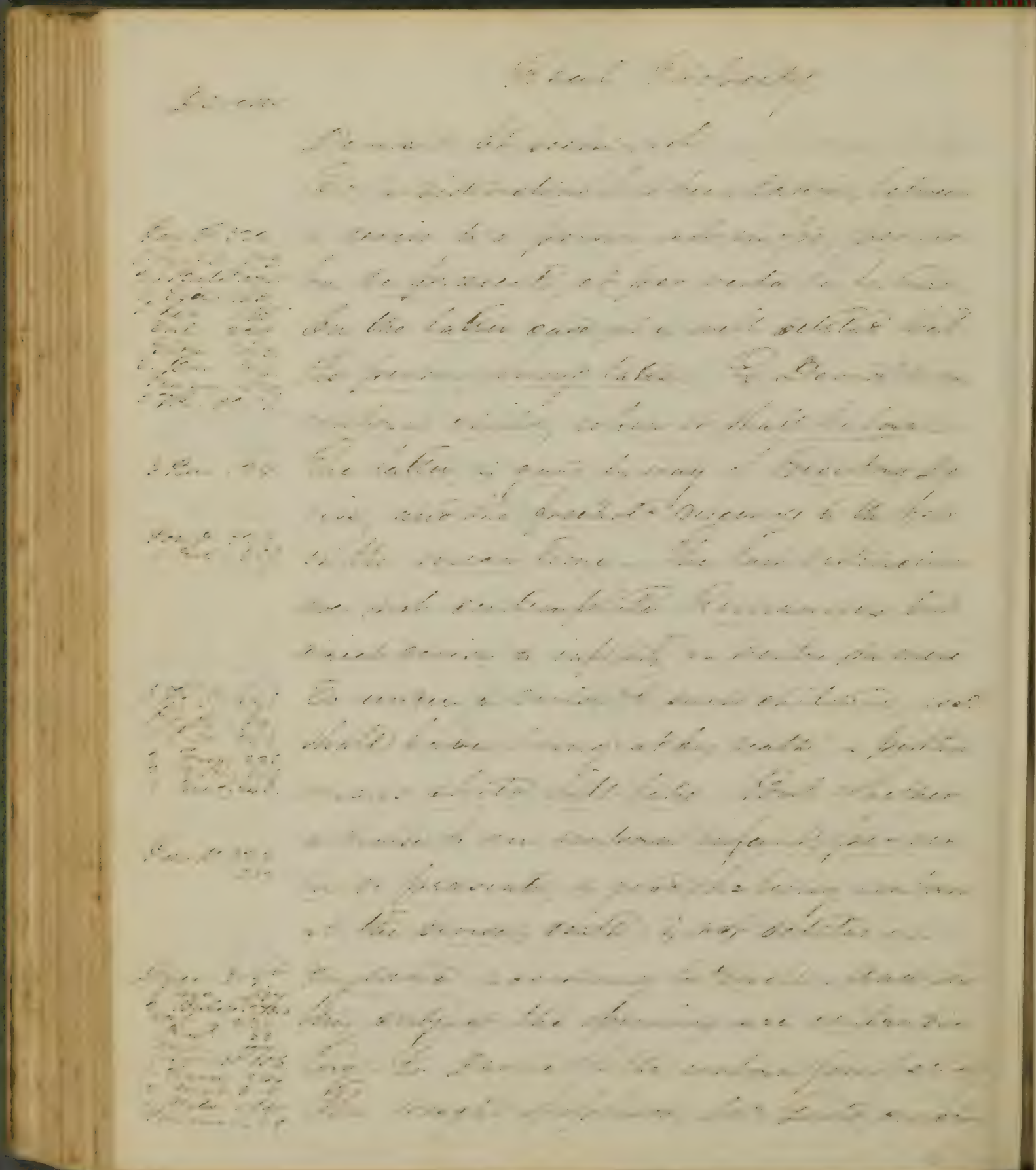
1. Where testamentary, and 2d Those as are compleat with a use raised. Powers were unknown at the Com. law before the Stat. of Uses 27 Henry 8. they were the method of raising uses, and are merely ancient powers. 1. Natural Powers, as a tenant for life, and these are natural powers, as the tenant for life, before the Statute of Uses, had the power of making leases, such authority to the person entrusted, and A. as a tenant for life, had the power of making leases, as the tenant for life, had the power of making leases.

Such authority must be strictly pursued, and the execution of power must be strictly pursued, and the execution of power must be strictly pursued, and the execution of power





Head Quarters



Devises

Paul Ehrlich

Dr. ...

...

Exp. 2.

Exp. 2.

...

Exp. 2.

Exp. 2.

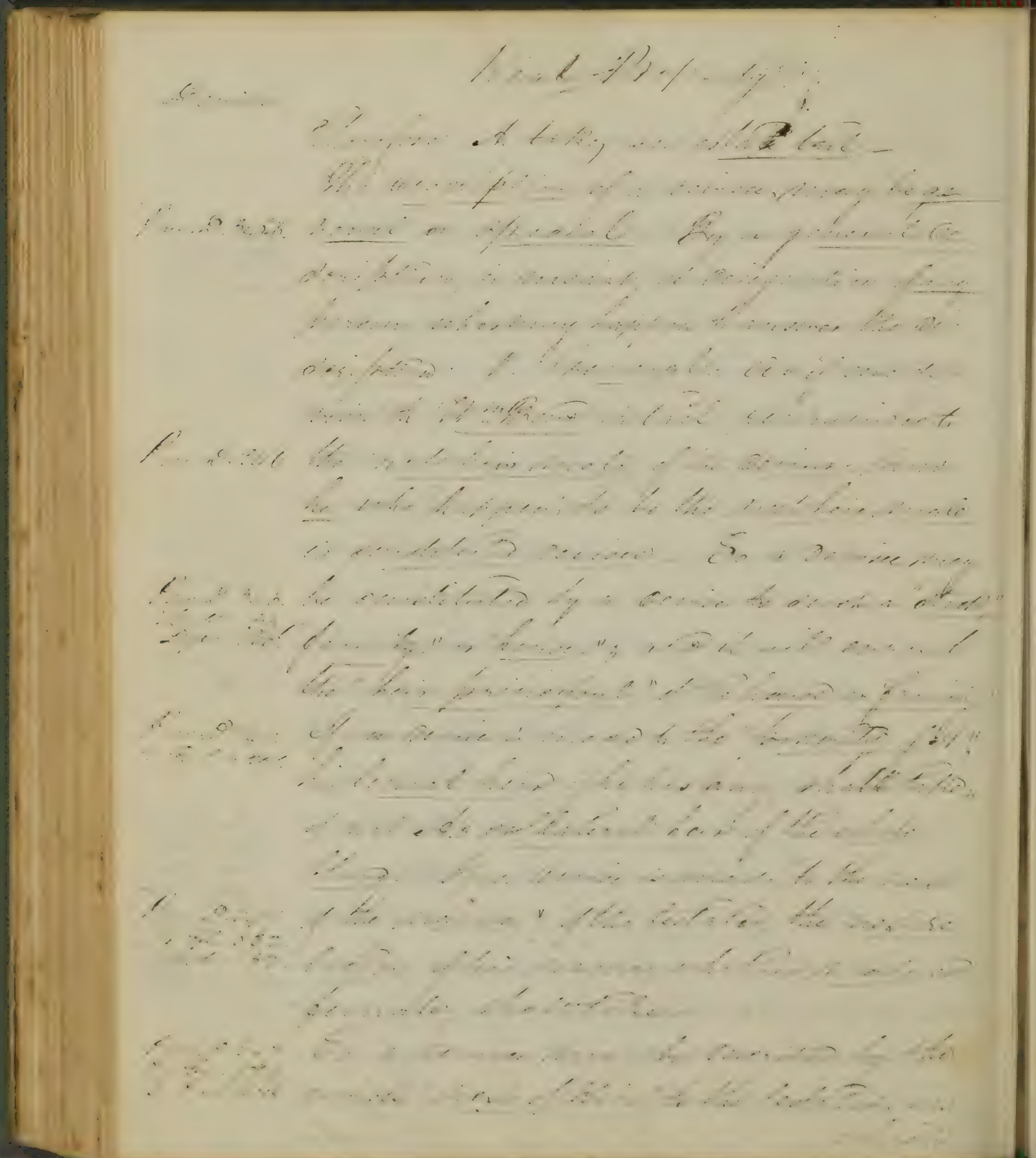
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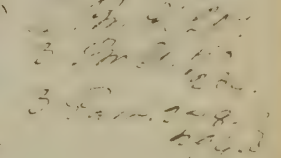
Exp. 2.

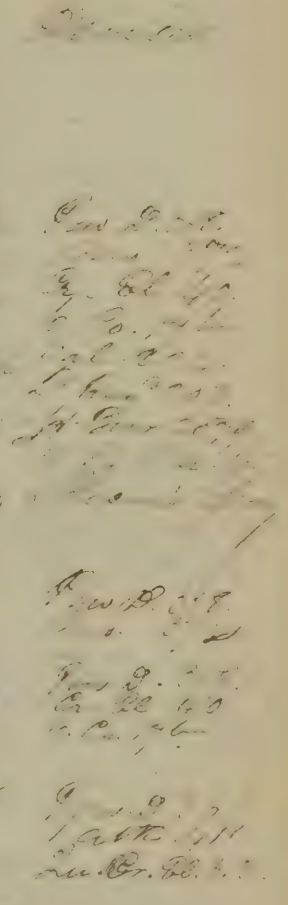
...

...

...







Real Property

Devise

[illegible] and devise, living B. B's eldest son
and heir at law "to the heirs of his body"
[illegible] B. B's eldest son
[illegible] "heirs of the body"
[illegible] B. B's eldest son
[illegible] B. B's eldest son
[illegible] B. B's eldest son

Head Purchase

Devise

Devise

Com. D. 316.
318
1 Pla. 229.
1 Br. C. 480.
2 Bl. Rep. 1180.

Purchase
Doug. 739.
Cowp. 290.

Com. D. 38.
Fr. Ch. 492.
1 Bro. P. C.
1 Ves. 454.
Amb. 272.
Cowp. 290.
1 Bro. P. C.
1 P. Wms. 600.
Com. Dig.
Estate (B. 2.)

Real Property

Dower.

heir at will an estate in fee simple and the grandson & the Issue if an estate is limited to the heirs male of the body of a Stranger & to the heirs female of the body of William Bird & Rosamond his Daughter tho he having a Son (whereby the estate would become vested) & Daughter & Issue Male & Female. Bell's Anatomy, Art. Daubted. Vide

Cru. D. 387. 1 Inst. 24 a-

Heir female" (without more) Coverture heir general. But "Heir female of the body" designating his female issue whether heir general or not.

Cru. D. 388. 1 Inst. 10 a. 1 Co. 83 b.

A person, under some circumstances, may take under a limitation to "heirs" & "issue" but not under a limitation to "children" unless there be no heir or issue, real or personal. So in some instances, where the word "heirs" is used, it may designate the person who is to take the estate, & not the estate which he is to take. The person who is to take a fee simple by some matter

Cru. D. 385. 8. Ld. 40. 3. Co. 28. Sheff. 28. 1 Ins. 384. Plowd. 240.

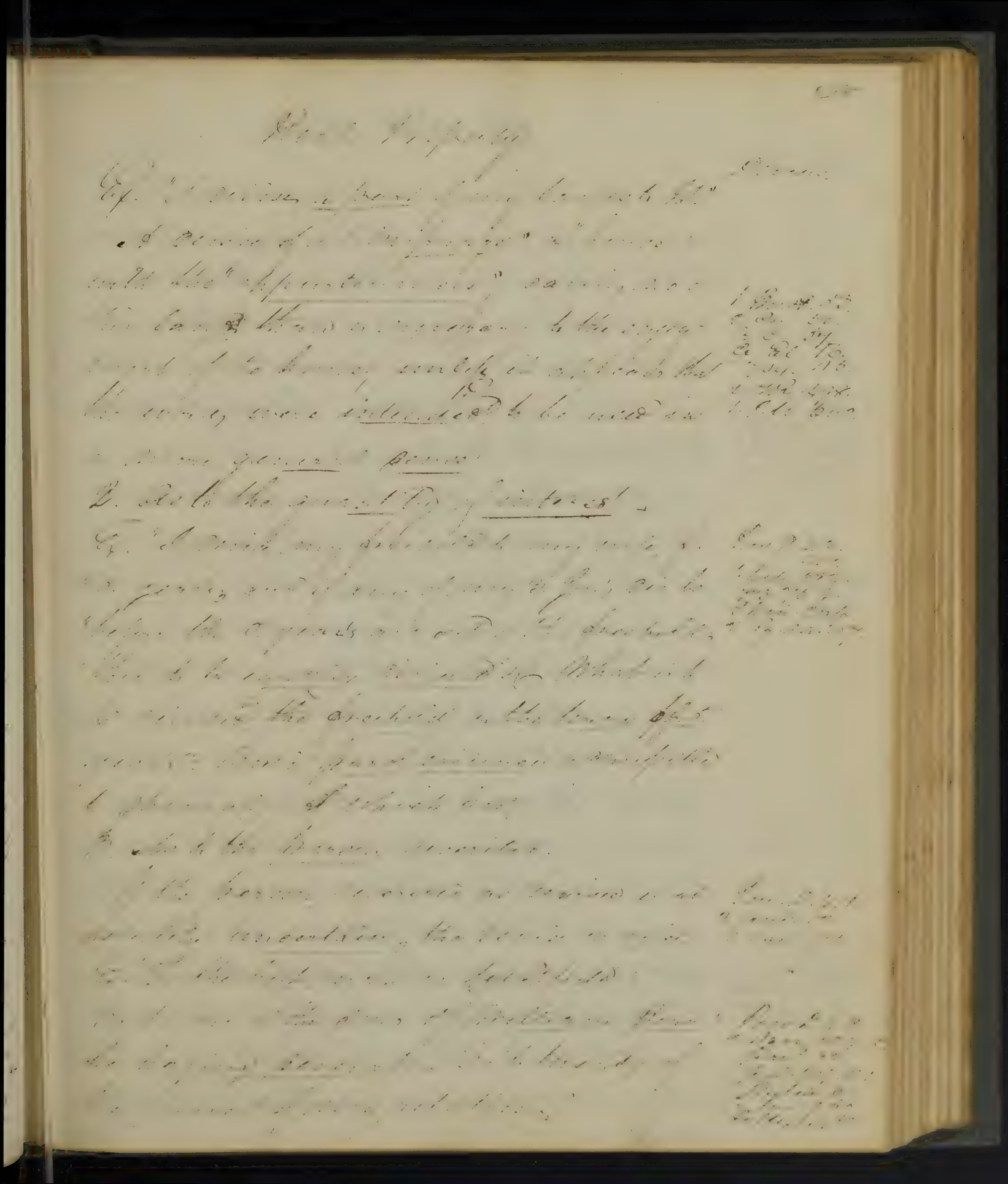
Cru. D. 388. Cro. 26.

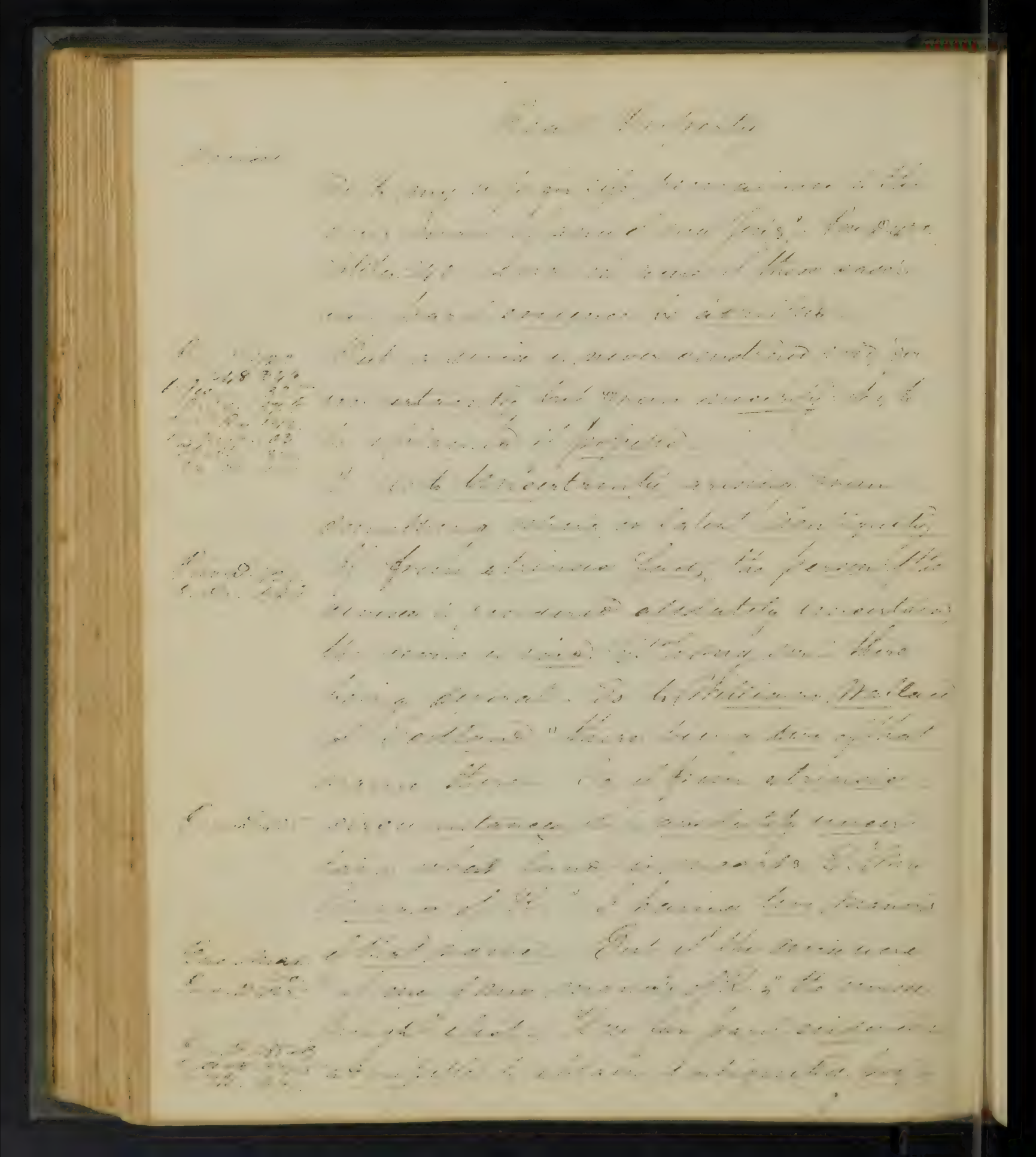
e 8

Heads Breaks

Genesis

In order to prevent Errors in the Publication of Revised Statutes, by Reason of the Omission of Words intended to be inserted, or the Insertion of Words not intended to be inserted, it is provided by the Act 9 Geo. 4. c. 83. s. 1. that the Clerk of the Parliaments shall, upon the Application of the Person or Persons employed to prepare any Revised Statute, cause the Bill, as originally brought in, and the Bill as amended in Committee, and the Bill as finally agreed to by both Houses of Parliament, to be produced to him; and if it shall appear to him, by the Report of the Committee, or by the Minutes of the Proceedings of the House of Lords, that any Words have been omitted in the Bill as originally brought in, or inserted in the Bill as amended in Committee, which were not intended to be omitted or inserted, he shall cause the Bill to be reprinted, with the Words so omitted restored, or the Words so inserted left out, as the Case may require, and shall certify the Bill so reprinted to be correct; and such Bill, so certified, shall be laid before both Houses of Parliament, and shall be the Bill upon which the Statute shall be framed.





Deed Poll

Pow. D. 4 c. 6.
Pow. D. 4 c. 6.

Pow. D. 445. 6
Pow. D. 431
Sal. 2. 54.

Pow. D. 445 b. 7
Pow. D. 456.
Pa.

Pow. D. 431.
Pow. D. 445.

Local Interest

Devises

Can. 9. 61.
Jarm. 1. 32.
Jarm. 2. 15

[illegible] Devises [illegible] Devises
[illegible] Devises [illegible] Devises
[illegible] Devises [illegible] Devises

(Gen. Comp.)

Paul Roberts)

Dennis

would have taken

Thomas, J. Dennis, in my also Bail of
appeal by the Devises, enforcing the Bail
of the Defendant, during the time of
Imprisonment. The Devises having taken the
Devise accordingly, petitioned to accept the
Devise. The Defendant's counsel
pleaded that the Devise from
which the appeal had been brought
was a Devise Absolute, especially
as after the Devise, having a clause about
Paul's death, Dennis died intestate
& the Devise was a clause to
Paul from the Devise after the Devise,
to which the latter then it was
Imprisoned under Ex Parte Clerk was in
Custody of the Defendant to be
Charged with Debt, and Ex Parte
Paul was Imprisoned under Ex Parte
Debt was under the Devise

Real Property

Plaint Copyright

Canada

of Lois and Canada Electric Light Co. to
restrain and enjoin the defendants, Defen-
dants Counsel, the Canada Electric Light Co.
from the infringement

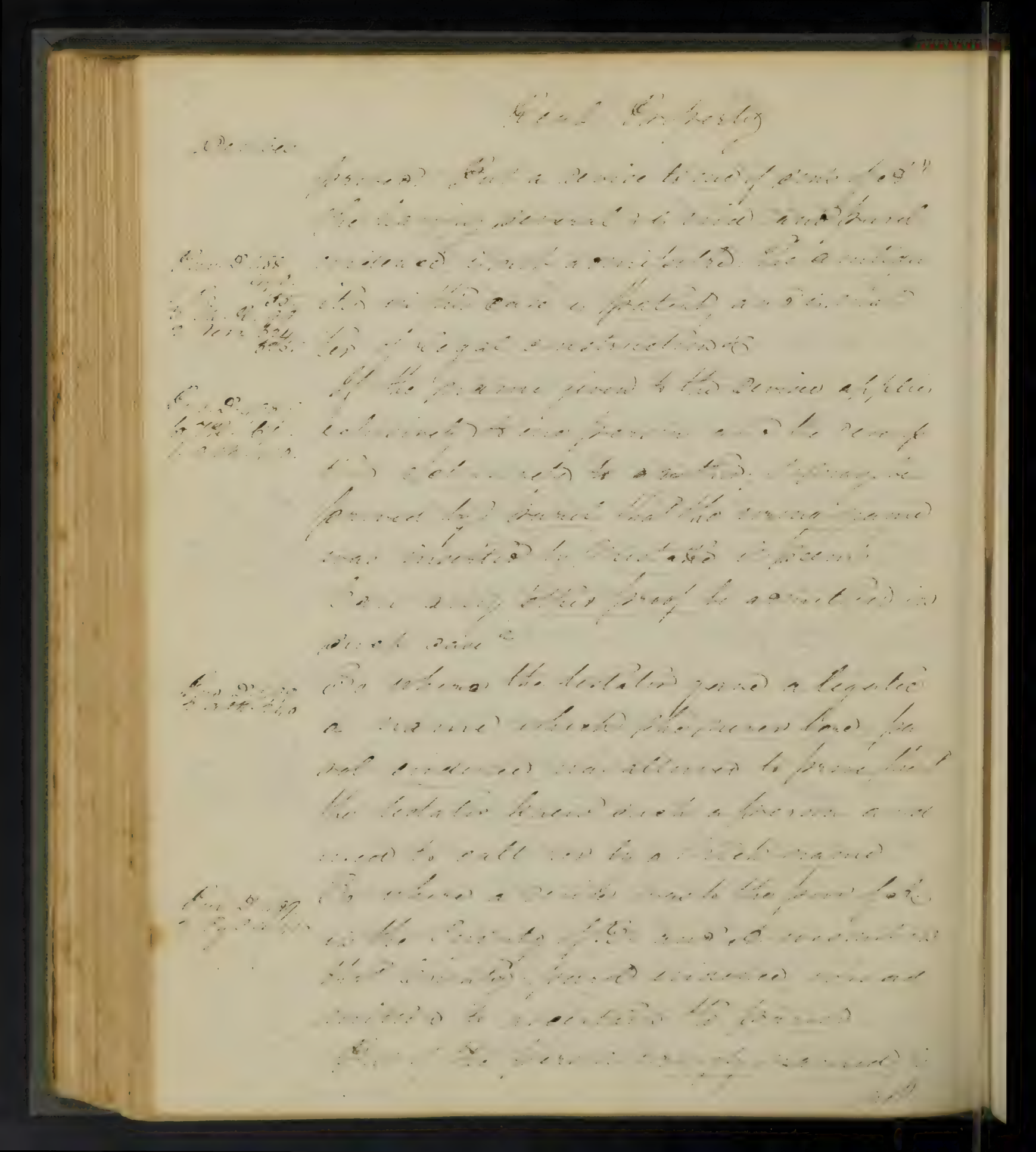
Now for that reason evidence may be
produced in support of the plaintiffs
& Canada

from instrument exhibit number
of plaintiffs Exhibit number three. The de-
fendants claim to manufacture and sell
an electric light & electric ap-
paratus under letters patent of
the Province of Canada dated [illegible]

Exhibit number three is a certified
copy of an assignment from the Canada
Electric Light Co. to the plaintiffs
Lois & Canada Electric Light Co.
of all their rights & privileges
under the letters patent of
Canada [illegible]

[illegible]

[illegible]



Trial Evidence

Denman

are not at all disposed, nor determined to admitted to show and communicated. If there "fair play" the evidence Gen. Proto. 2 Atk. 258.
of the Grand Jury, would not have been rejected."

Gen. Could it not be urged, that the Gen 522.
direction was by mistake?

Of course, if unintended, the hand and word shall be admitted to disclose the falsehood of them. But it does not prejudice the purpose of communication, to an explanation of the effect and character of words, understood; as an interpretation; to an explanation of terms, not certainly understood.

However plain the case appears to Evidence.
the Jury, evidence in this case, admitted to show Gen. 93. 2 Wils. Ryan 201. 2 Campbell 502. Holt 32.
that the blood shed was intended, to be the daughter, rejected.

Denman to the Judge in the Judges

pleased."

Real Property

Power

Deed Poll

A matter of legal construction, whose
the form of the instrument. If one de-
vises to his wife for life, remainder
to A in tail, and A dies in the life-
time of the wife, A's issue take
nothing by the devise, for A had
only a contingent interest, which
determined by his death before the
life estate fell into possession. But
if A had survived the wife, A's issue
would have taken by descent. If
a power is given to A for life, with
remainder to his issue in tail, and
A dies in the lifetime of the donee
of the power, A's issue take nothing
under the power, for A had only a
power, not an interest, which
determined by his death before the
life estate fell into possession. But
if A had survived the donee of the
power, A's issue would have taken
by virtue of the power. If a power
is given to A for life, with remainder
to his issue in tail, and A dies in the
lifetime of the donee of the power,
A's issue take nothing under the
power, for A had only a power, not
an interest, which determined by
his death before the life estate fell
into possession. But if A had
survived the donee of the power,
A's issue would have taken by
virtue of the power. If a power
is given to A for life, with remainder
to his issue in tail, and A dies in the
lifetime of the donee of the power,
A's issue take nothing under the
power, for A had only a power, not
an interest, which determined by
his death before the life estate fell
into possession. But if A had
survived the donee of the power,
A's issue would have taken by
virtue of the power.

Wood Carpenter

Wood.

2. Do the Jurors of the Jurors
the testator declarations are and
ought to be admitted as evidence of
that? 2. Does the Judge who tried the
cause, in giving his opinion and decree
ought to know the testator declarations,
and if he should have, what
ought those to be, if he had lived
before them upon the inquiry, either
personal or real? 3. If allowed would
it be an objection to the admissibility
of the declarations that the declarant
at the time of making them was
under the influence of fear of
death? 4. Is the testator
in point of interest, or would
therefore testify in favor of the
testator's interest? Does the
children ever become the heir at law
under the will? Or could they
take by living in a manner of conduct
to in the face of the record? Or would
the testator's declarations, under the
circumstances stated in the

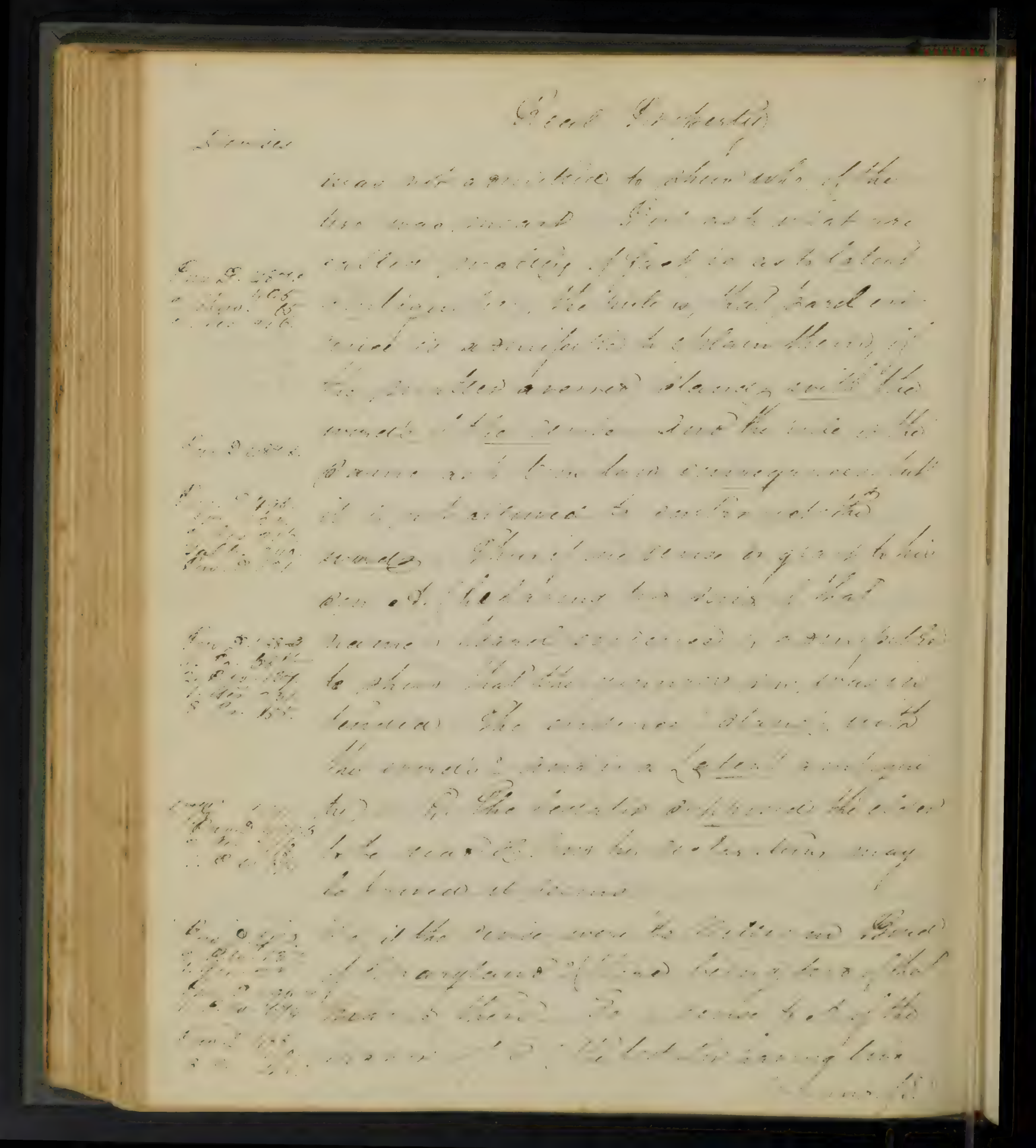
Case 2 p. 48.
Plowd 468.
Co Litt 302.

Case 2 p. 48 b.
2 Leon 44.
Co Litt 6.

Case 2 p. 48.

Case 2 p. 48 a
Co Litt 302.

case



Real Property

Devise

estate comes to the testator's heir at law
Stat. 1 W. 4. c. 23 s. 3. 4. 5. 6. 7. 8.
s. 10. 32. 1. 7. 3. s. 10. 4. 22. 2. 15. 31.

Or where the devisee was also executor
and made a sale of the testator's
real estate but died before the
sale (the heir being the testator's devisee)
here a conveyance from the heir would
clearly be requisite to enable the
devisee's assignee

2. Land has been granted for the
purpose of being laid out in a certain
manner (as for streets)

3. Devise of all testator's lands &c. to be
sold & to pay his debts out of the
proceeds. Testator agrees to sell the
same land, the purchase money of the
land and to shew that after payment
of the debts there remains a surplus
(the heir pleads a devise of lands
charged with the payment of debts
and the surplus is claimed under a
devise of residuary estate)

Cases Practical

Cases

E. Proof of execution and the execution of the testator's Capacity to ascertain the application of a term which may be a name either of persons or things. Ex. Devise to W. R. and his children or "to his issue". In this case proof is admitted as to the fact of his having children or not at the time of the decease of the testator is executed

Ex. Evidence is admissible as to the state of the testator's property to ascertain the proximity of some part in the enclosure mentioned in his will in connexion with evidence of the testator's habits to shew that a particular piece was intended by the testator

Ex. Devise to A. B. and his children. Proof is admissible of the state of the testator's family at the time of the execution of the will to shew that the testator

Cas. O. 57; 3, 18.

Ex. 3 Ves. 258. 4 Ves. 810. Dougl. 210. 3, 1. 1 Wash. 204. 1 Bro. C. C. 31. 1 Ves. 8. 2 Ves. 450. 1 Ves. 8. 2 Ves. 450.

Ex. 2 Ves. 135. 1 Ves. 8. 2 Ves. 450. 1 Ves. 8. 2 Ves. 450.

Paul Executor

Powell

Powell proves that the Paul Jamaica Executor
Power even of the testator declaring
it accepted to relieve an equity, and
not an implication."
"An equity" includes in general an
case table claim. But the meaning
of the word as here applied to the case
of the power is this: That where upon
the face of the power equity favours title
Powell p. 522. Power which is contrary to the legal
construction arising upon Powell's
Power is considered to subsist in contest
the power; which is in effect to vest the
the latter. Ex. If land is devised to an
executor for the payment of debts, the
surplus is vested at law in the heir of
the testator. Powell p. 528
Powell p. 528. But if land is devised to the executor
in trust to sell for the heir: In this case
Powell p. 528. Power p. 529
Holt C. 195
evidence is admitted even of the testa-
tors declarations, & there that the power
is not intended to have the surplus

3

Real Estate

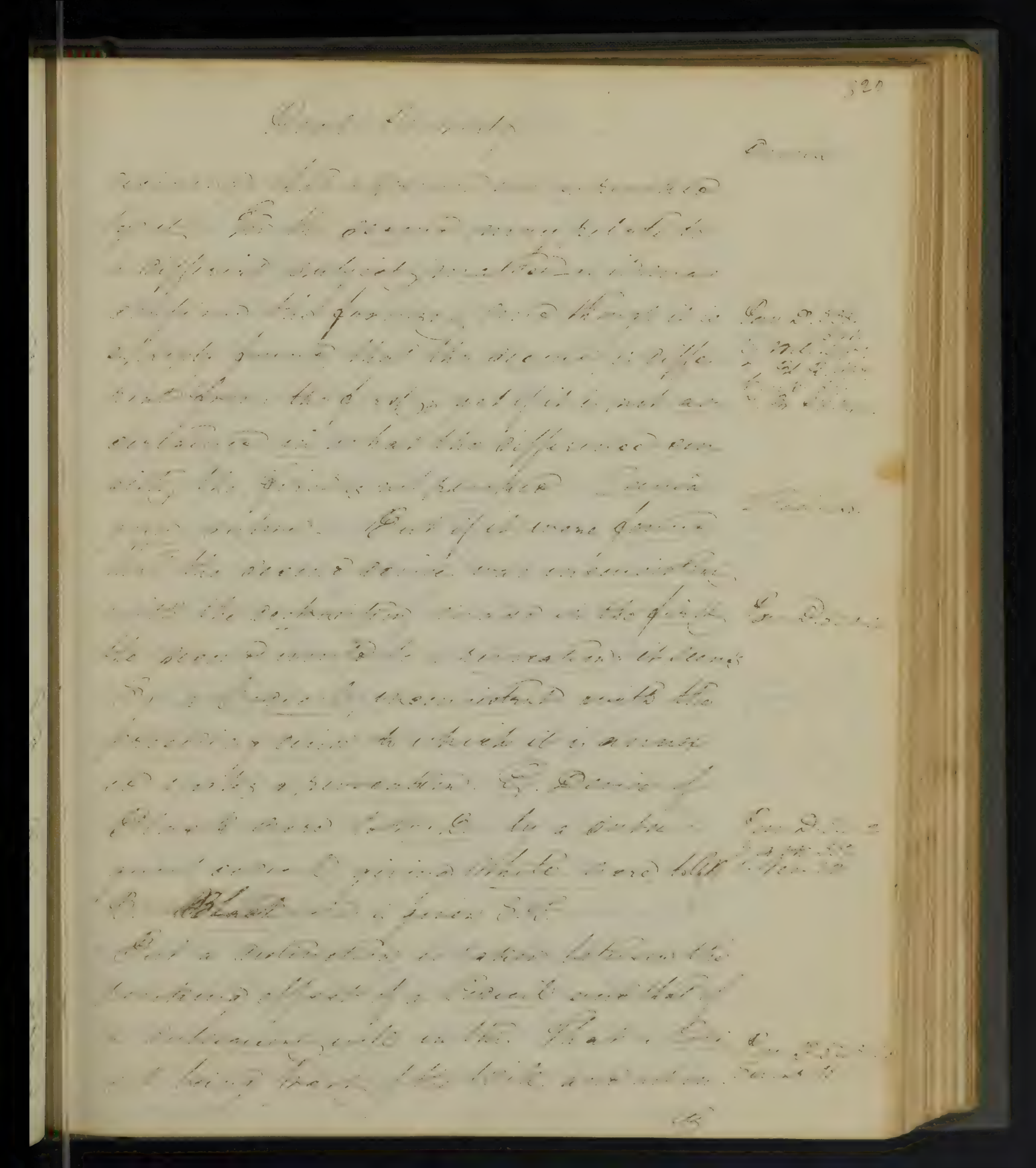
Liens.

Liens, as a performance of the Engagements. Liens created by and forfeited in all cases to accumulate Prop. E. Executed in Real Estate to his Exor, and omitted to charge in Estate cent an Annuity Devise to P. E. because the Exor omitted to levy it; E. has created an absolute Fee

Ex. v. D. 330, & 2 Ves. 305.

Real Contracts

Of Obligations.



Circuit Court

Dennis

Rent Reserved

Lessee

and is accepted to pay the said Lessor the
Lessee rent reserved by the said Lease
Indenture. (2 Wms Conveyancing
In Lease 2nd Edn. 1 Ed. Cas. 413. Dav. Pr. Pr.
Lease 1st May 1st. 2 Lease 3rd Edn. 4 Rent 2. 9. 8vo
by these the Lessee covenants that
Lessee pays to the Lessor the
Lessee rent reserved
Lessee pays to the Lessor the rent re-
served by the Lease, which is
payable to the Lessor, which is
payable to the Lessor, which is
payable to the Lessor

Real Property

Devises.

Tetchmarsh v. Brainwood 1 Ves. & Bea. 141 Ireland 1805

Prov. 55 Geo. 3. c. 3. 4 Geo. 6. c. 1. s. 6. 1 Anne st. 1. c. 15. 1 Geo. 2. c. 37.

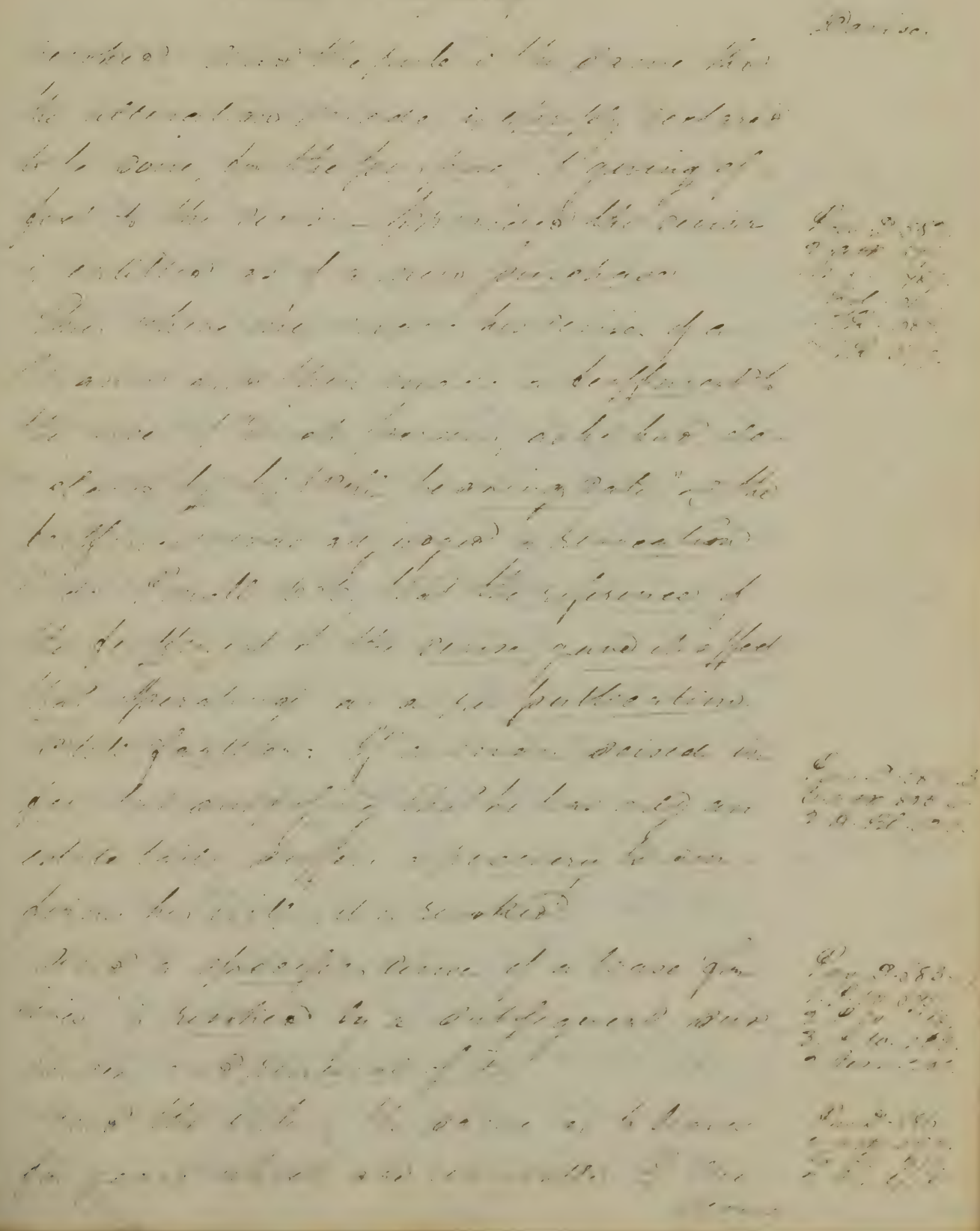
Real Property

Power

Power to sell land

Power to sell land

Power to sell land



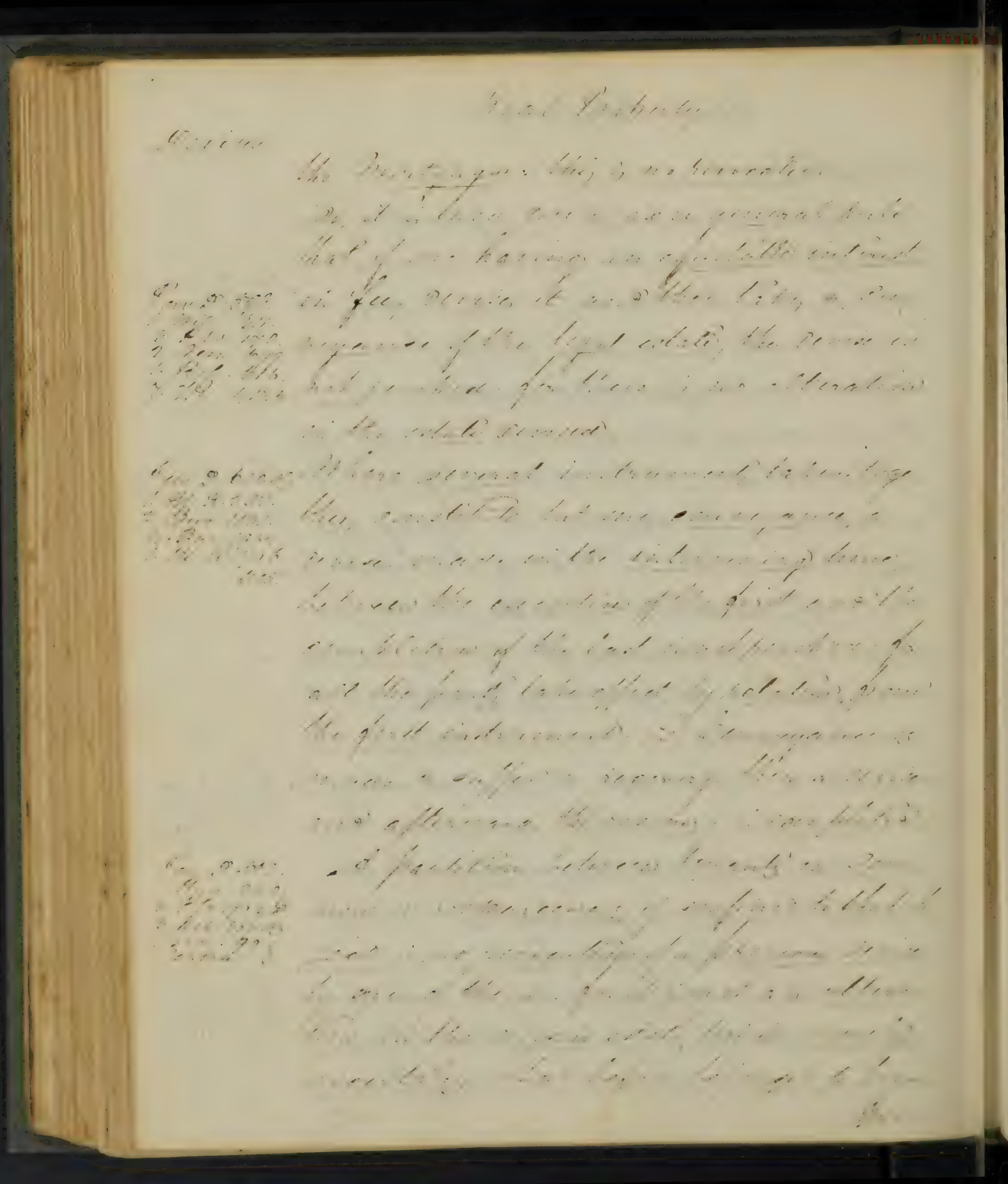
Recitals

Gen. Ord. 1794 s. 2. Pl. Ord. 1805. 6th.

Gen. Ord. 1794 s. 2. Pl. Ord. 1805. 6th.

Gen. Ord. 1794 s. 2. Pl. Ord. 1805. 6th.

Gen. Ord. 1794 s. 2. Pl. Ord. 1805. 6th.



Book the Fourth

Canada



Grant Anthony

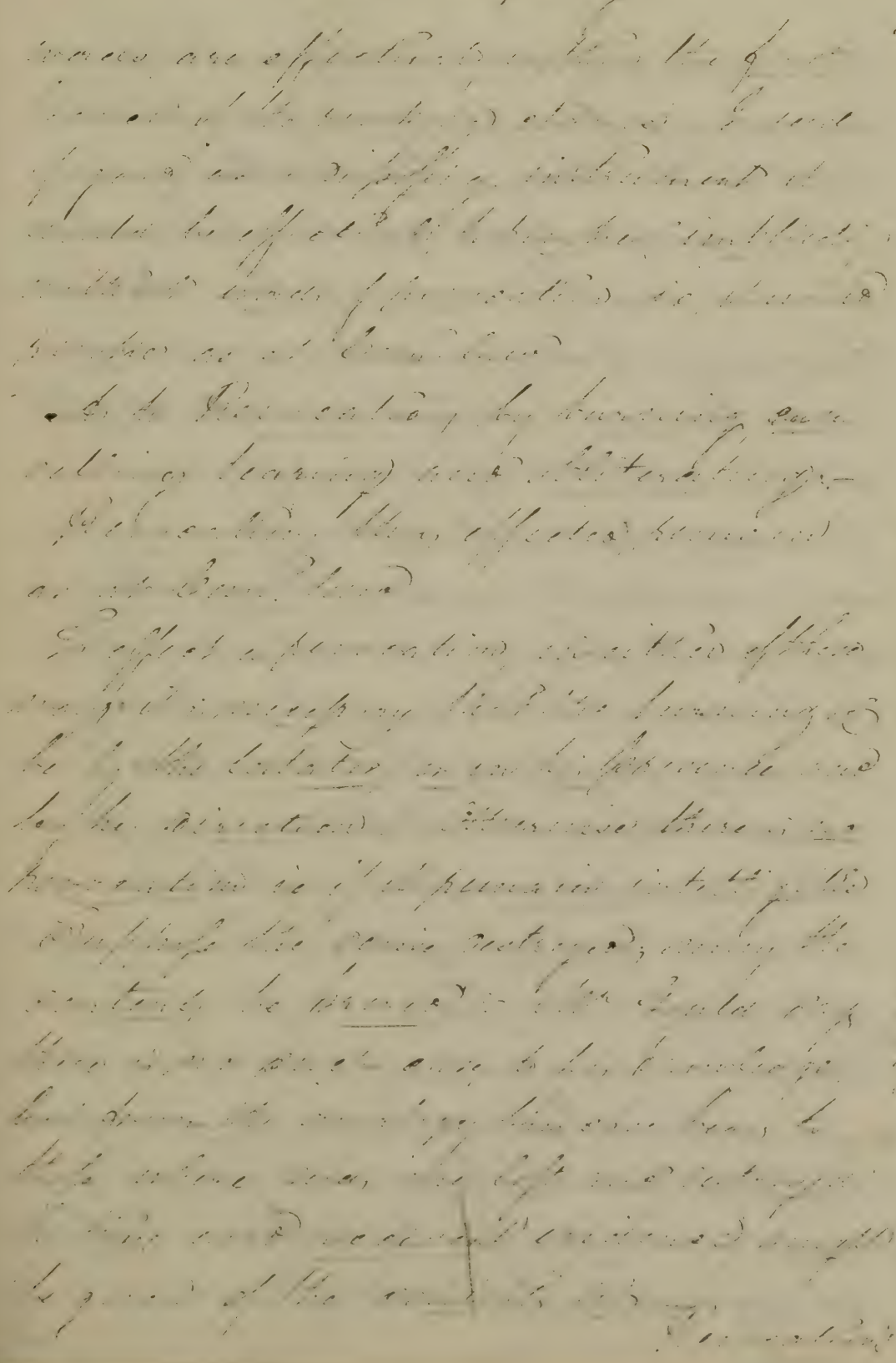
Devise

of a farm devise (subject yet a lease
to the devise of the land devised to con-
veyance, for the term, with a total
power to the Devisee and heirs and
assignees, of the farm, during the
residue of the said term, and to
the same uses upon trusts and
purposes to him and his heirs
and assigns.

Grant to the devisee, to commence
on the decease of the testator, for
the residue of the term, subject
to the rent, covenants and
conditions, reserved by the lease
and to stand in the place of the testator
as to the land

Grant to the devisee, to commence
on the decease of the testator, for
the residue of the term, subject
to the rent, covenants and
conditions, reserved by the lease
and to stand in the place of the testator
as to the land

Plant Respiration









Real Property

Of Subdivisions

Powers

To provide by Ordinance for the Subdivision of land and regulate the Sale of Lots and Blocks

Land subdivisions subdivisions and Lots

Land subdivisions, & create any public ways, grounds, parks & other subdivisions

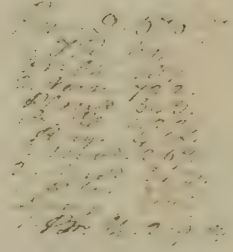
Land subdivisions

Land subdivisions

Land

Deed Restraints

Last Will



Form of Petition

Form of Petition

Form of Petition

Book Register

Of the proceedings of Courts
held in Devises

Penal Statutes

Devises

of the Land aforesd. But land is answered
of one assessment in every parish of the
County aforesd. In the Division of the Land
in such evidence of the title in Deed or
Devise to be given in writing under the
hand & seal of the party granting of
the Land, attested under

The inquisition was taken before the
Sheriff under the oath of 12 Jurors both the
Plaintiff & Defendant attending & no exception
was taken to the summons but
the same effected in the usual manner

A Writ of Error was then obtained
& sent to the Sheriff of Queens County
to procure a Jury [illegible] the Inquisition
was taken before the Sheriff & 12 Jurors
who brought in their Verdict in the
same manner as in the Inquisition & gave to the
Plaintiff the Land in the Issue. The
Damages at the Inquisition were assessed
at £ 250. 0. 0 & 40/ Costs
£ 0. 0. 0 & 12. 0. 0 (Per Cur. Damages
to be assessed at the same rate as in
the

Cur. adv. vult.

Cur. adv. vult.
Cur. adv. vult.
Cur. adv. vult.
Cur. adv. vult.
Cur. adv. vult.

Real Corporation

Devises

Grand Pierre

Of Pierre and Pierre

in Chancery

Pierre married in England before a
little to the whole effect, after a
little to prove it in Chancery, after
a time it will, of course be held
it will be done in Chancery
in effect accordingly after the
Pierre and Pierre being restored after
years over in Court of Chancery: for if the
heir in some other should after the decease
of the first be entitled in Chancery could
there in execution against them
The Court of Chancery has no concern
with the marshalling of assets in bills
for that where one of the co-heirs Pierre
Pierre complains that a prior
in the Chancery
I have been told that Pierre a
little of a Pierre is not necessary however
in order to establish a fact that
records of court in proof of the

Real Property.

for. **Descents** from a part of the Course of Lectures on Real Property. Read in January in which they are treated more by Hempfield than principles and as Judge Story in lecturing practising may profitably on this branch, will than the Lectures of Chancellor Kent Com. 380.

Lecture on the Title of Descents in Maryland

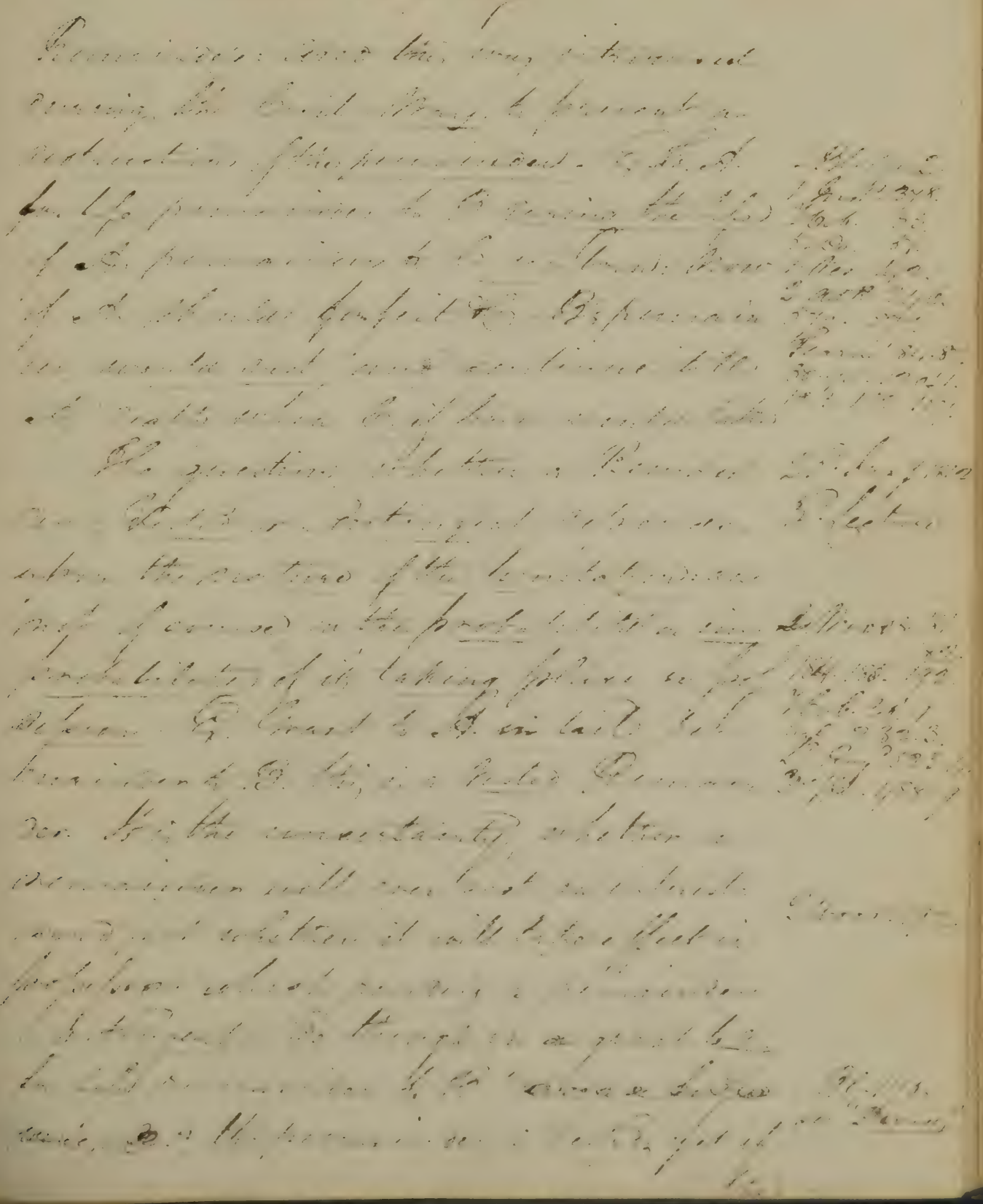
Real Property

[illegible]

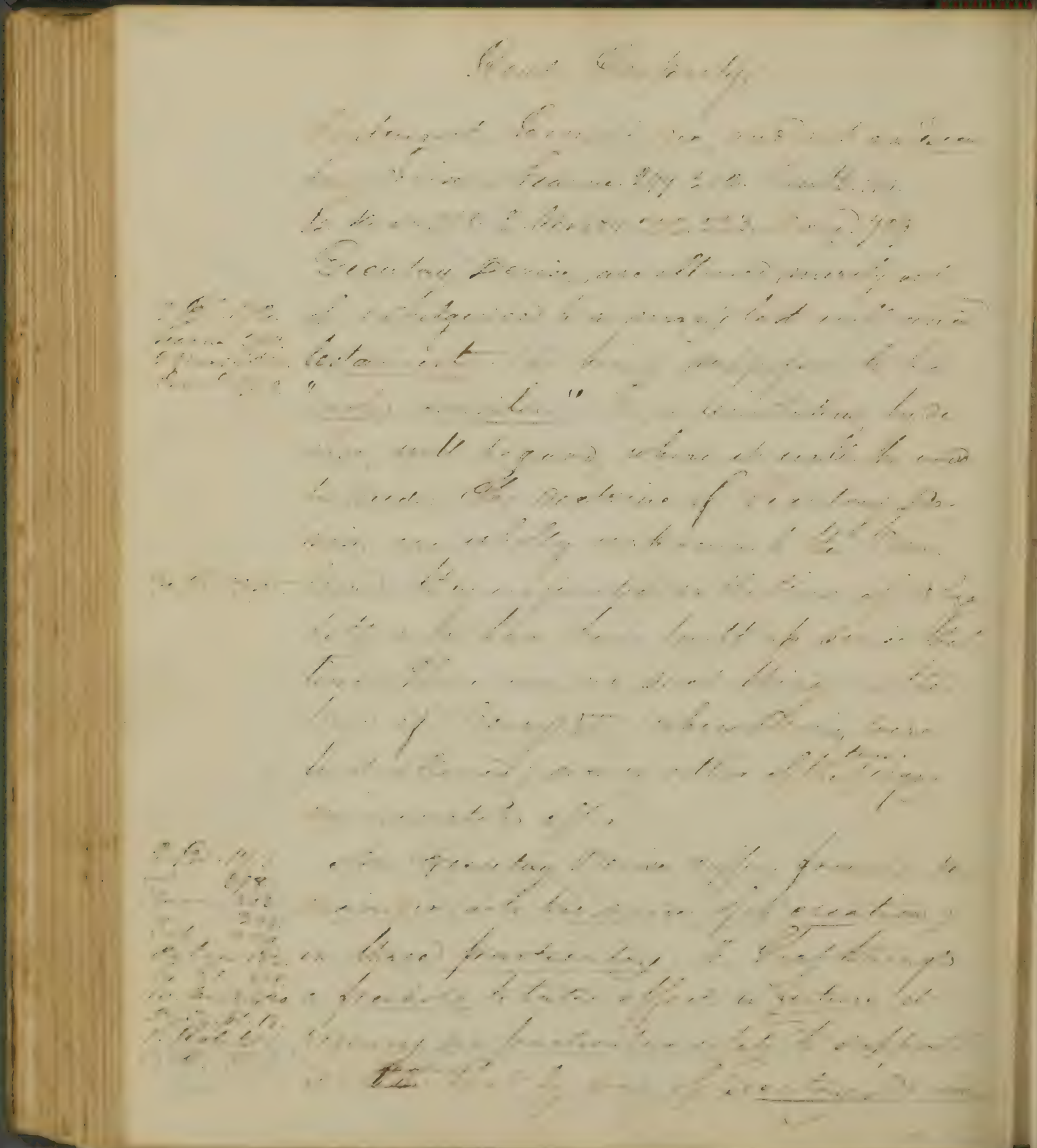
and after the expiration of that estate to
[illegible] for life, [illegible] to the
estate in tail male of the said [illegible]
estate, for the same time and in the same
manner, [illegible] as aforesaid, with
remainder to the first and other
sons of the said [illegible] in tail male
successively, one after another, as they
shall be in priority of birth, and the
heirs male of their bodies respectively,
the elder of such sons and his heirs male
to be preferred to the younger of such
sons and his heirs male, and to the
[illegible] of the estate [illegible]
[illegible] and
[illegible] Esquire, [illegible]
[illegible] and
[illegible] Esquire, [illegible]
[illegible] and
[illegible] Esquire,

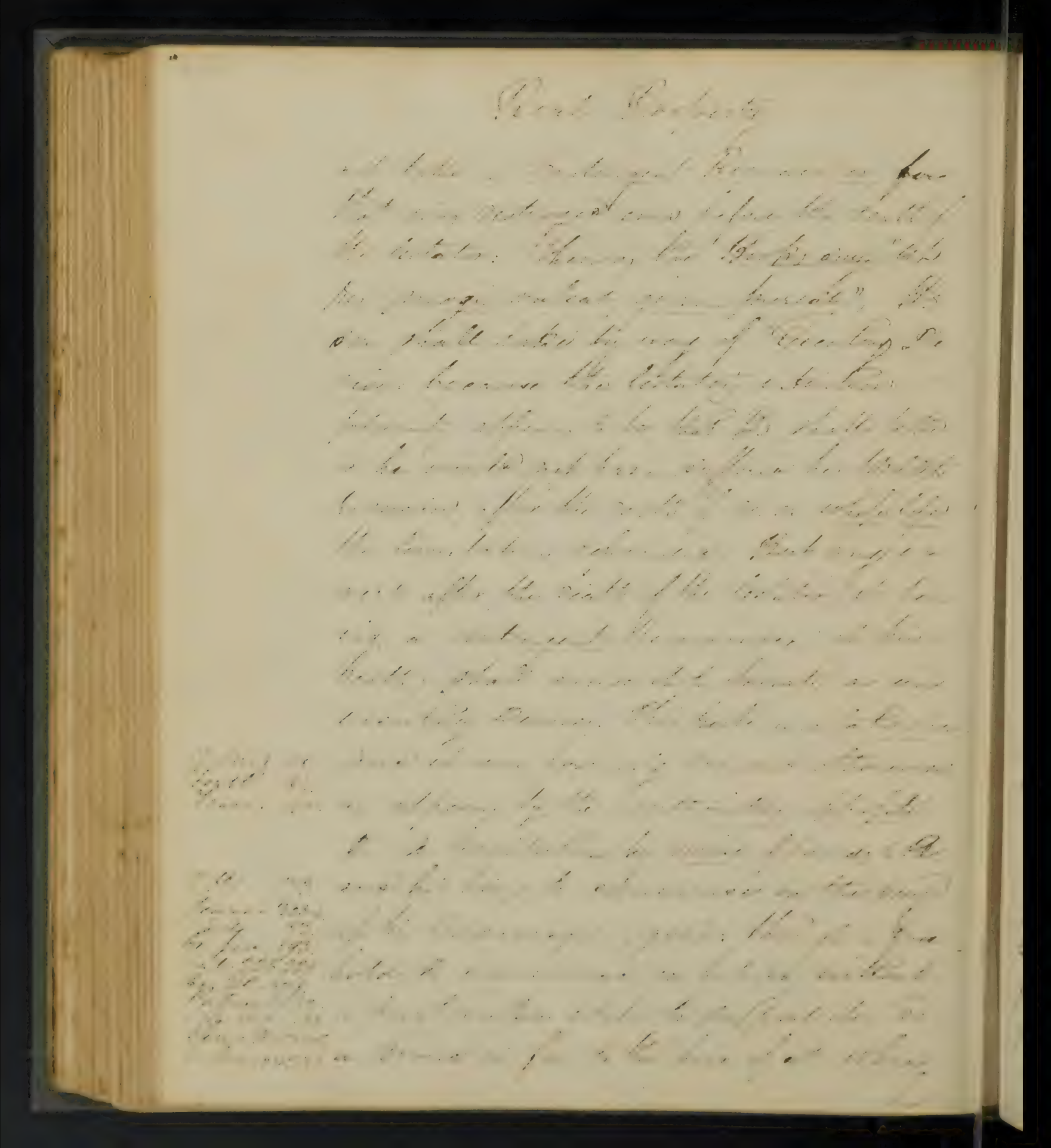
Rem. 24.
Rem. 25.

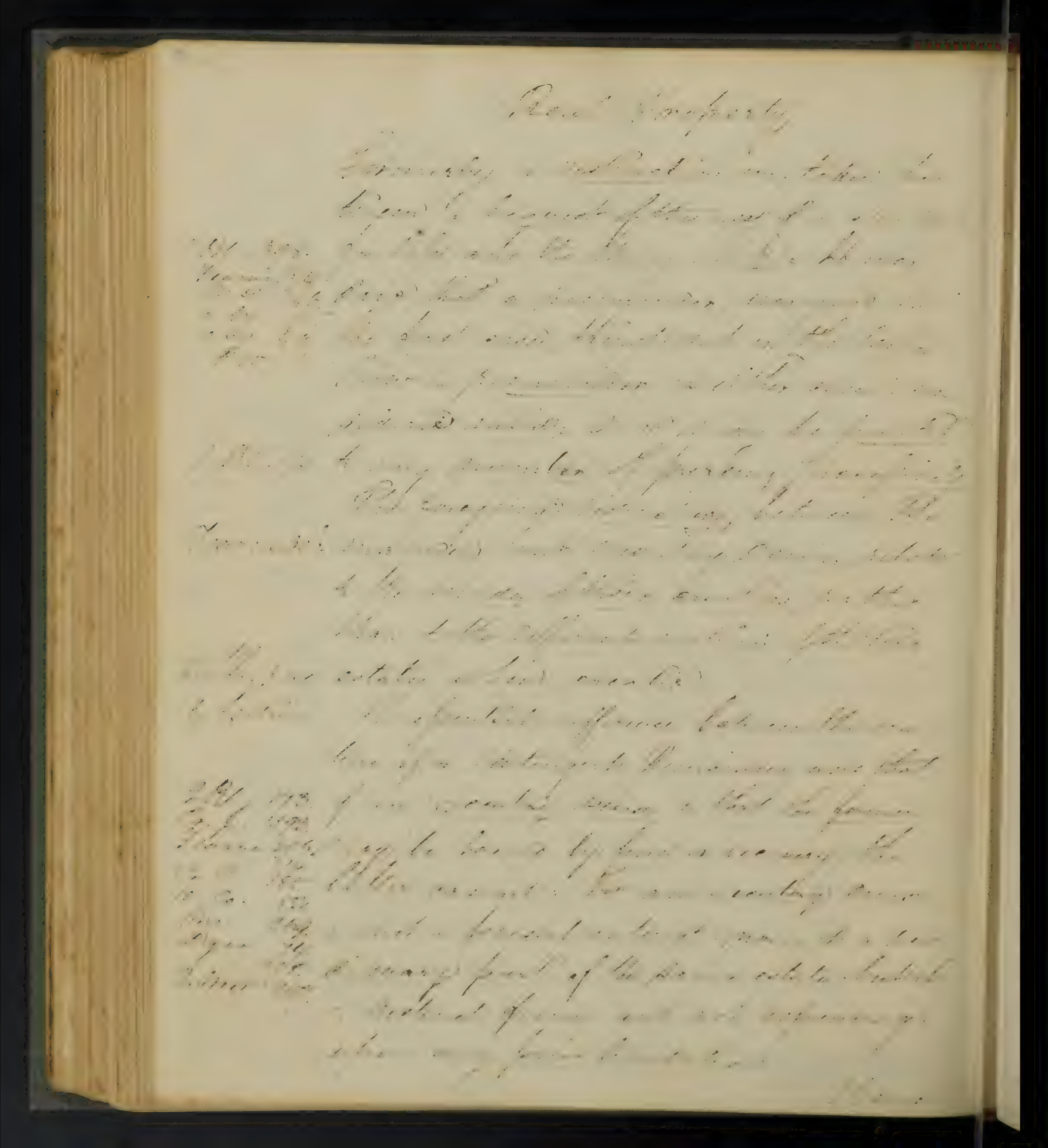
Remainder of the Body
Cattle and Outstanding











Legal Entails.

Power to make a valid entail of the
person entitled to the contingency of
a child to the estate to be entailed. Estates
must either be vested or contingent. The limi-
tation must be such as the law
allows. In an entailing deed
cannot be limited to children to exist
after 21 years a perpetuity: (if one of
the intermediate children be
barren, impossible)
The rule is that an Executory Devise
to be good must be limited so as to take
effect after the death of a life in being or
before and 21 years and the duration
of pregnancy. Or after 21 years, during the
life of a life in being, in being at the
time to enable a person to limit as to
all the random children. The term of
21 years is allowed the children may
be of age at the creation of the
estate not under any disability. Parents
only. The practice of entailing
to the heirs of particular children

Book

Real Property

any limitation of a future estate or
by way of remainder tending to a per-
petuity is void: and this rule applies
alike to [illegible] devises. Thus a gift to A for life, &
after his decease to his unborn children for
their lives, remainder to their unborn
children: here the last limitation is
void: For no limitation can be carried
further than to the unborn children of
a person in being. But however void
a limitation, it affects the preceding vested,
as being void the limitation over
gives to the prior taker the
same estate as if no limitation over
had been made. Thus a gift to A for life
with remainder to his unborn children
vests in A an estate for life only
and not an estate tail: for the gift over
to his unborn children is void. The
rule against perpetuities does not take effect
until the period of a life in being
& 21 years, & remainder to his eldest
son if he attains 21 & the limitation over
is good if it must take effect within the
period of a life in being & 21 years from the
date

Real Property

Chan. 320.
Chan. 320.
Ch. P. 422
Hare, 422

Chan. 320.
Ch. P. 422
Hare, 422

Chan. 320.
Ch. P. 422
Hare, 422

Chan. 320.
Ch. P. 422
Hare, 422

[illegible] Interest [illegible] Estate [illegible]
[illegible] Estate [illegible] Estate [illegible]
proof that they are assignable either
in equity [illegible] before the Contingency
happens [illegible] before the interest vests
They are called Possibility coupled
with an interest: and, when there
be a Possibility & but a Bare Possibility
[illegible] But Devise [illegible]
[illegible] Estate [illegible] Estate [illegible]
[illegible] Estate [illegible] Estate [illegible]
[illegible] Estate [illegible] Estate

[illegible] agreement cannot be [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [

Real Property

Law of Property

Co. Lit. 2. 3. Pl. C. 23.

Doctrine of Merger

1 Ld. Raym. 734. 2 Lev. 234.

1 Ld. Raym. 734. 2 Lev. 234.

2 Co. 73. 1 Ld. Raym. 734. 2 Lev. 234.

Real Property

Of Estates in Freehold—

Corporeal Hereditaments

Fines and Recoveries

Under Common Law estates are considered with regard to the quantity of the interest in the owners and the time of their enjoyment. They are now to be treated with regard to the number & connexion of their owners.

1. The whole subject matter of property is one of which there is only one owner, but which may be split into parts & all of which are possible to be in several hands. Each of these parts may be held absolutely free, or subject to the claims of others.

2. The estate in land [illegible] is [illegible] or [illegible] [illegible] [illegible]

Real Property

one, in fee simple, and that of the other in expectancy. A grant to A. and the Heirs of his Body; then A. and the Heirs of his Body are entitled to the Estate at the same time, and they may alien, forfeit, or charge it accordingly. A grant to A. and his Heirs, then A. and the Heirs of his Body are entitled successively, the one after the other. A grant to A. and the Heirs of his Body, then A. and the Heirs of his Body are joint Tenants of the Estate for Life, with Remainder to the Heirs of their Bodies, and they have a joint Estate for Life, but distinct Freeholds; and if one of them die, the Heir of the Body of the other shall have a Remainder after the Death of both.

2 Bl. 181. 4

2 Bl. 182.

2 Bl. 182.

2 Bl. 182.

Real Estate

If a man conveys to his wife & to the heirs of their bodies & has the reversion in fee in the event of the death of the grantees without issue living at the time of his death

Their estate would be created by one and the same act & the same conveyance or Deed. Now they could have different titles - one might be good and the other bad which would not be the case if

Friendly suit to try title

Their estate would commence at one and the same moment & if one should fail the estate of both would fail

If a conveyance is made to the heirs of A & B & A has a child at the time and the conveyance to A & B at another time they are joint tenants

If a conveyance is made to the heirs of A & B and A has no children at the time of the conveyance to A & B but afterwards has children they are tenants in

Real Property

Common Law But law may vested a use as fee tenant through trees at Diffe. time Tenant for life to the use of himself and his future wife for life 2 Bl. 121. n. Dyer. 340. 1 Co. 101. 13. Co. 56.

Tenants - a party of Units of Reflection who are placed seizen of an undivided half of the whole Tenants are owners in Partnership with Estates Title arises by Conveyance Each is seized of the whole Tenancy in common arises by Conveyance will a fee is granted to Husband & wife. They are not Joint tenants, nor tenants in Common

Tenancy in common arises when they are seized per tout only. The title by entirety and unity - Since the law has vested by his own act People of age, must act as a penalty - Tenancy for life - But the while cannot remain in the person unless life of by time or

2 Bl. 182. 1 Bl. 52. Litt. § 288. 5 Co. 10. 1 Vent. 30. 3 Ley. 216. Co. Inc. 676. Cro. Jac. 448. 1 Vent. 248. 2 Bl. 182. 2 Bl. 85. Litt. § 291. 6 Co. 57. 1 Leo. 57. 1 Inst. 182. 204. b Cro. E. 228. Dick. 1. 8. 203. 1 Kel. 284. a 2 Vern. 710. 3. Bac. 190 5 Mod. 352.

or recovery in which the title arises -

The last rule, negatively stated, is that where a person has a beneficial interest in land and only a bare legal title, the beneficial interest is treated as the property which is transferred by the conveyance. Thus if A holds land on trust for B, and A conveys the land to C, B's beneficial interest is transferred to C. (What is the difference between the beneficial ownership of property and legal ownership? One of which is that a debt can be proved in bankruptcy whereas a beneficial interest cannot be proved in bankruptcy.)

2 Prest. 98. Cole Title "Parties and Terms"

3 Prest. 98.

Personal chattels given to husband and wife in joint tenancy vest absolutely in the survivor, & wife is not entitled to dower in an interest held on trust by the husband and another - the other tenant has a higher title than another. In England & Scotland & Ireland & What is the difference?

3 Prest. 98. Ld. Ch. 3. Geo. 184. 1 Geo. 2 c. 19 Ld. Ch. Real Property Act.

Upon the ultimate merger of contrary and beneficial interests the principal incidents of trust tenancy - One of which is that debts or to one are not barred executor as to debt - E.g. if debt made a mutual one, running, which can only be sued to debt by heir of the first deceased & of their representatives

3 Prest. 33. 2 Prest. 33. Ld. Ch. Real Property Act.

Read February

Real Property

The right of Curtesy is paramount to the claims of the creditors of the deceased husband even of judgment creditors by writs of elegit issued in his life time and bound the lands at his death. The same rule holds as to dower of the widow of a husband seised of lands in fee simple or fee tail general or special.

Curtesy not to exist at Trade. Lands held by the Stannaries not hereditable. Grants of the Duchy Chancery to allowed and the Law of Merchant prevails.

Parties in trade are not therefore joint tenants to all purposes, the custom of Merchants Law of Part. 14. 16. 192.

To give the encouragement of husbandry & trade on a family thought excentrick to the

Neither the King nor any other Corporation can be joint tenant with a private person. But the Queen Elizabeth & Lord Keeper Egerton were adjudged the Queen to have a moiety of the Lord Keeper's lands by survivorship.

3 Bac. Ab. 210.
Litt. Sec. 1. 86.
1 Bl. 184.

Co. Litt. 29
Litt. Sec. 282.
1 Bac. Ab. 184.
Watson's Law of Part. 2. 6. 3
4 Co. 29.
Litt. 30. 1 Bl. 340.
1 Co. 3. 61.
1 Bac. Ab. 214.

Cro. Jac. 646
2 Mod. 305.

Cro. Jac.
1 Bac. Ab.
Part. 182.

2 Bl. Ab.
Joint Ten.
Litt. Sec. 288
2 Bac. Ab.

Deed Poll

Partition Deed Recd the 8th Dec. 1865 between
Lord ... of Lands of Gravelly Hill & Gothic
Farm, Gravelly Hill & Gravelly Hill Together

By the Will dated ... Testator
devised the Estate to the Parties thereto
Equally with Power of Appointment and in default
Equally as Tenants in Common

But by Stat. 31 and 32 Vict. c. 101 ...
are Entitled by Virtue of Partition to
Hold ... In Severalty (This Deed Does
not Extend to Lands Copyhold or
Customary Lands) The Quantity are
Divided by the Deed to Make the
Value of Equal Lands

By Conveyance the Lands
in the Deed are Conveyed to the
Respective Uses the other and the Parties
to the Different Uses ... Lands of
Inheritance Tenure ... But a Power is
given to Grant Leases of the
Lands ... Power to Lease ...

survivor has a freehold for life according
to the creation of the estate

1. They destroy the unity of interest
   if there are two joint tenants for
   life and the inheritance is limited
   by a devise to them or their heirs: they are
   not deemed joint tenants of an estate
   granted to them for life and the heirs of
   one of them, for these are not liberate
   estates, but are only branches of one estate

2. If a joint tenant in fee marries a
   man for life, it destroys the
   moiety — this is a severance of the
   freehold. If one of three joint tenants
   alienes his share: the two others hold
   their parts as before, save only that
   there is no severance. If one of the
   three releases his part to one of the other
   two, the moieties and the other two
   parts remain. If all three the joint
   estate, the jus accrescendi ceases with

in general it is advantageous to dissolve the jointure — for the jus accrescendi ceasing taken away each may transmit his part to his heirs & alienate — 2 Bl. 184. 1 Inst. 185.

Sems if two are joint-tenants for life — if two are joint tenants for life and one alienes for the life of the other: he forfeits his interest — for during the joint-occupancy he can grant himself in his own half only as estate for his own life; & can grant it for the life of another — 2 Bl. 184. 4 Mod. 253. 1 Mod. 284.

If one joint tenant dies he can [illegible] the latter may have ejectment to obtain possession — But there must be no actual entry — for the sole act in case of receipt of the rents & profits is sufficient — 3 Bac. Ab. 649. 1 Ld. Raym. 726. 729.

Book Estates

Of Estates in Parcenary:—

An estate in Parcenary is one which has descended to two or more persons who are called Parceners, the joint heirs of a deceased person are two or more persons. They all inherit as heirs and are generally called "Parceners" or "Parceners."

By the custom of Gavelkind all the sons are Parceners to them all the children of the deceased.

All the Parceners are considered as one heir, having but one estate.

The property of this estate are in common held by joint tenancy.

There are three incidents of Parcenary title and behaviour.

1st. Every Parcener must be joined in pain, relating to their estate; and the action must be in their name and the writ of the

2nd. An entry by the Guardian of one in favour of another Parcener enures to the others.

Sole

Real Property

Pre-emption and settlement and donation: how one can lose a piece of land, maintain an action of waste and the other for one pretending under them brought waste by overbearing, husbandry, which [illegible] the estate of them & pierce & land by waste, not so. How differ intervallo from joint tenant, in which tenant & these always claim by several pierce tenant, in coparcenary there no other than estate of inheritance can be holden in Coparcenary but in several estate may be inherited, may be holden in Coparcenary

2 There is no limits of time necessary —

3. If one of the coparceners die the pierce nor can the heir of the deceased succeed pierce for the estate vest at the same time

3. The may have a writ that coparcener estate of inheritance Each other being pierce of the whole of a moiety entirety, not but of a moiety of the whole

Pierce

Revd Roberts

Where there is no fixed agreement the share of each Resident to her earthly husband 2 Bl. 438. 1 Inst. 165 - 166.

The parents of Persons to their Children in their Estates are in equal degree to the Ancestor and are entitled in their own right by the Ancestor leaves two Daughters or two Sisters

one if they are not in equal degree Estates or are entitled by right of Representation they then take per stirpes. If the Ancestor has two Daughters one of whom dies leaving issue living the Ancestor the issue take per stirpes - and the law is the grand children the issue of two Daughters - And in Persons Representation should be regarded to Equality as in other cases of Persons

So long as the husband continues in Person of Person the husband not being divorced or living in Adultery

Person of the husband is entitled by Curtesy

Deed of Trust

Quitclaim:- Do it me aliens the annexed
Fee, as Granteen: for the sole & Private
use and the Proper behoof

To it was Referred the Petition of the
Citizens of Ward Two, praying that
Certain Persons may be appointed
Inspectors of Election in said Ward
Two at the Election to be holden
on the first Monday in November
next for City
Officers by Ballot.

Do the husband Party have Entered in
one entire holden by the wife in Common
with: for the wife Party have Entered into
the Land So holden by the husband and
Were in the Possession & Enjoyment of-

Quitclaim Deed to Private Persons
Corporations &c Consent in of Petitioners:-
1. Where Land were to the Division
with the Said Land not have
2. When they Share a Third Person to
receive the Division 3. Where the Deed
Given with the other Party first-

4

Real Property

Q. Where lien exists for the purchase money, are all incumbrances thereon void as against the lien?

Particulars stated in case of Clarke v. Clarke, 2 Beav. 417.

Q. Where a purchase is made subject to a mortgage, and the purchaser afterwards pays off the mortgage, can he tack a subsequent incumbrance to the mortgage, so as to prevent intermediate incumbrances coming in between the purchase and the subsequent incumbrance?

Real Property

vested in other parts of the inheritance,
or from all have the profits or use of the
lands.

IV. Of Estates in Common.

Tenants in Common according to
Littleton are those who hold by one Litt. 291
and undivided title, but by unity of
possession. But this must be understood,
not of any other unity than that of possession
or pleading, because by the old title
a tenancy in Common is not, strictly speaking,
made the same quantity of interest as
is at the same time and under the Litt. 291.
same title or conveyance if the parties Litt. 292
were made to create a tenancy in 2 Woodd. 33
common. But if the interest and title
are the same and the commencement of
the same time and the possession is vested
in the claimants, until the joint tenant 2 Woodd. 32
title shall be executed and the
be a tenancy in Common.

Land

Real Estate

Circulation in a deed or Bargain

1 ff. 2n. One of the joint tenants [illegible] [illegible] and the other joint tenants are [illegible] [illegible] [illegible]

Real Estate

Real Property

devised "one half to A. the other to B."
for joint tenants do not take by dis-
tinct moieties and there the Generality of
Interest is certainly expressed
So if one grant half of his land to A. 2 Bl. 183
& B. and A. are tenants in Com. then 2 Co. 60.
has A. great title - possession at first 1 Salk. 391.
but time. So also as Devise of land 3 Bac. Abr. 194.
to A. & B. "jointly and Generally"
etc. is a joint tenancy for a joint
estate is vested in the words jointly
and generally implying Necessity &
power of Survivorship -

So a bill against two or more "to 1 Ch. Ca.
compel a Partition between them" is 3 Ch. 36.
a bill in Common. For the words 1 Vern. 32.
"equally" &c. 3 Bac. 95. 2 Bac. Abr. 3.
2 Bac. Abr. 376.

That it has been formerly held that 2 Bl. 183.
the words do create a joint 3 Bac. Abr. 194.
tenancy - however in a modern case 1 Co. 60.
two words in a deed have been held 5 Co. 52.
1 Com. Dig. 4.

Real Estate.

A Grant a Lease, or Le[illegible]
Conveyance, &c. [illegible] Ch. 60
Tenancy in [illegible] may subsist in equity
[illegible] Equitable estate, [illegible] was created
previously. The right of a tenant in
Com. of an indenture is entitled
Power [illegible] and it seems the tenant to
enter where the right is vested in
Pers. of tenant in com. law Estates
in fee, may grant, grant, convey his
share to the other; which a joint-
tenant cannot do for he may release
to the residue of a Tenancy in
common. — Tenants in com. are not
Compellable at Com. Law to make Par-
tition; tho by Stat. 31 and 32 Geo. 4
they are — There is no Conveyance
between them can they sue by Ejectment
[illegible] They cannot join in actions
relating to the Estate; for their title and
interest are several. 2 Ruy. & Sc. 2 H. & M. 207.
But if an intruder turn out a tenant
in

Local Statutes

[illegible] in [illegible] [illegible] [illegible] all rights [illegible] [illegible] [illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [illegible] [illegible] [

Book Pleadings

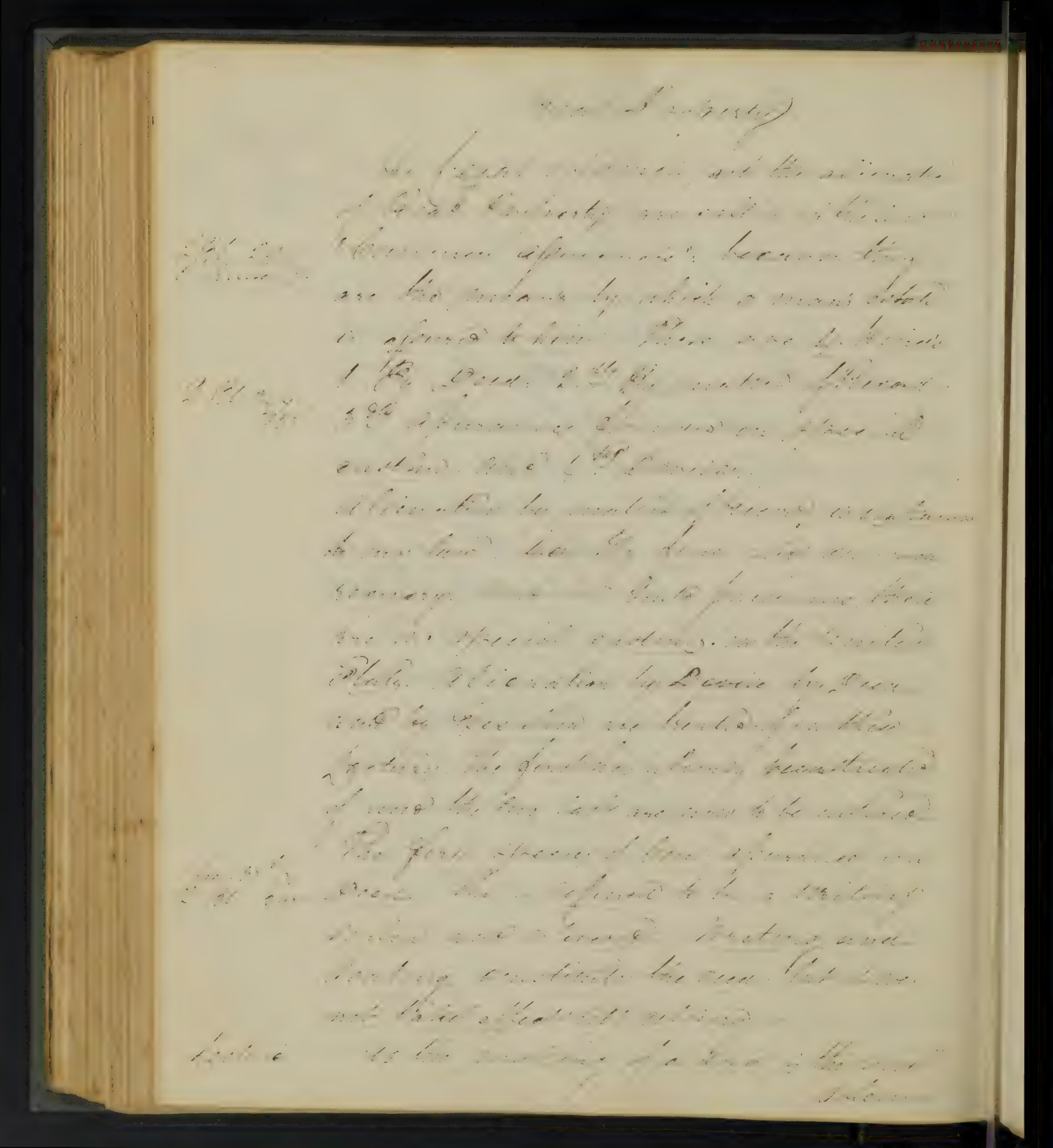
own proper account to evidence of such
matter. But a plea and averment that
it was by and, is sufficient. [illegible] Mod.
plea by one who denies the others title

Where the Jury cannot ascertain such
matter - as great length of title and
quiet possession to be presumed and
for account being demanded by Executor
& sufficient evidence to a Jury. The
plaintiff is averred

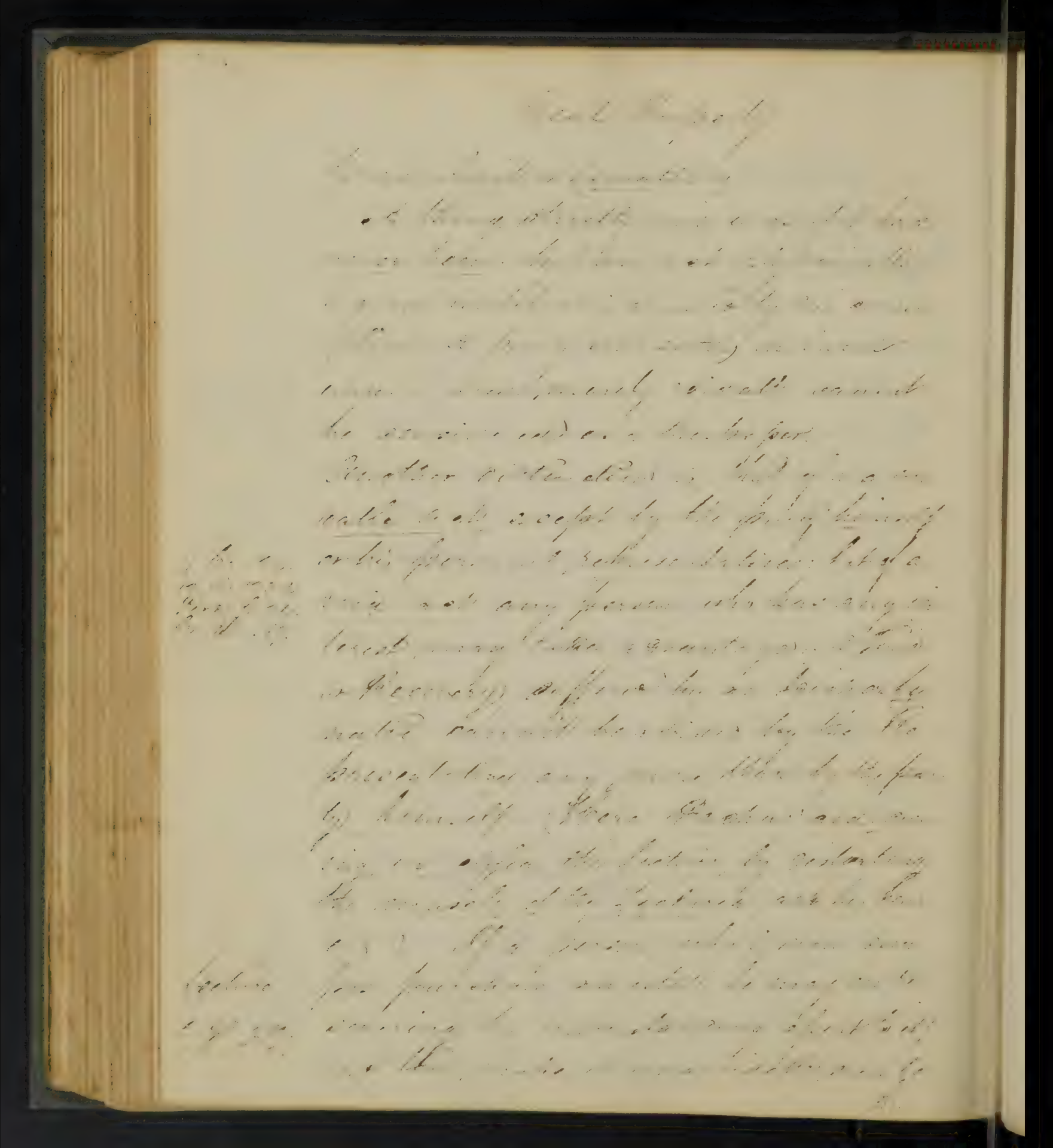
Confession by the Def^t in equivalent of
Case, entry and water is sufficient
i.e. it is sufficient to prevent action but
and Jury go to the Jury.

After such pleading in ejectment the
tenant disputes in the same breath for
another party - for this is incident to
the pleading and is virtually only one
action of account.

The Bl^k of pleadings may not, but
ought on demurrer to be such as to bring
before the court the point in question &
only



8



Paul Jones

Real Estate

Land Tenures)

divisions usually met with: though in the
latter many) The different formal or
ancient Grants of Land are eight.
1. The first is what is called the "Fee
Simple" Grant, and the name of the
parties, with their additions, the recep-
tion, recitals (if any) the consideration,
the description of the parcels or thing
granted, and the exceptions & reservations
if there are any. The Granting words
usually are "Have granted, bargained, sold,
aliened, enfeoffed, released, and confirmed"
Some of these words are not strictly
necessary, but it is usual to insert them.
The habendum is usually also
inserted, but is not necessary.
Then follows the name of the grantee
or grantees in the premises, and the usual
habendum, and the consideration is inserted in

Ch. Pl. v. 4. Cruise 63

3 Co. Litt. 1 a. Litt. s. 1.

Real Property

Local Statutes

Real Property

A Power of Attorney to be made use of
in the Province of Ontario. For the purpose of
executing Deeds or other Instruments
of Bargain and Sale, Leases for a Year,
Assignments of Mortgages, Releases of
Equity of Redemption, Surrenders of Copyhold
Estates, Acceptances of Fines, Admittances,
Recoveries, Bonds, Warrants of Attorney,
Cognovits actionem, Agreements, Awards,
Proxies, Notices, Demands, Receipts, Accounts,
Petitions, Affidavits, Answers in Chancery,
Depositions, Certificates, Releases, Acquittances,
Discharges, Mortgages, Assignments of Mortgages,
Transfers of Stock, Dividends, Powers of Substitution,
Revocations

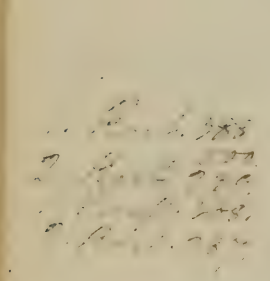
Local Statutes

Deed Poll

Grant Grantee

The Grant there are certain hereditaments
vested by Deed Lease & Release, conveyance
to the Grantee. If the Grantee dies
then it is essential in Grant that the
grantor or mortgagee of lands or tenements
should be ascertained before a Justice of
the Peace. Care is to be taken in the Statement
of consideration to see that the
Grantee is properly described.

If Grant is to be executed in order
to convey estate it should appear
from the Grant that the Grantor
is seized in fee simple of the land
to be granted or that he has power
to dispose of the same. The Grant
should be signed sealed & delivered
by the Grantor in the presence of
two witnesses who should attest the
execution of the Grant by the Grantor
and the Grantee should also sign
the Grant in token of his assent
to the conveyance. The Grant
should be stamped with the proper
stamp duty before the execution thereof
otherwise the Grant is void
and cannot be given in evidence
in any Court of Justice until the
duty and penalty are paid
thereon.



Royal Academy

Real Estate

Title and the duty of searching the Records

Can the Court try the question of title and direct the Sheriff to convey?

Can the Court direct the Sheriff to convey a title which is not of record?

Can the Court direct the Sheriff to convey a title which is not of record?

Can the Court direct the Sheriff to convey a title which is not of record

Real Property

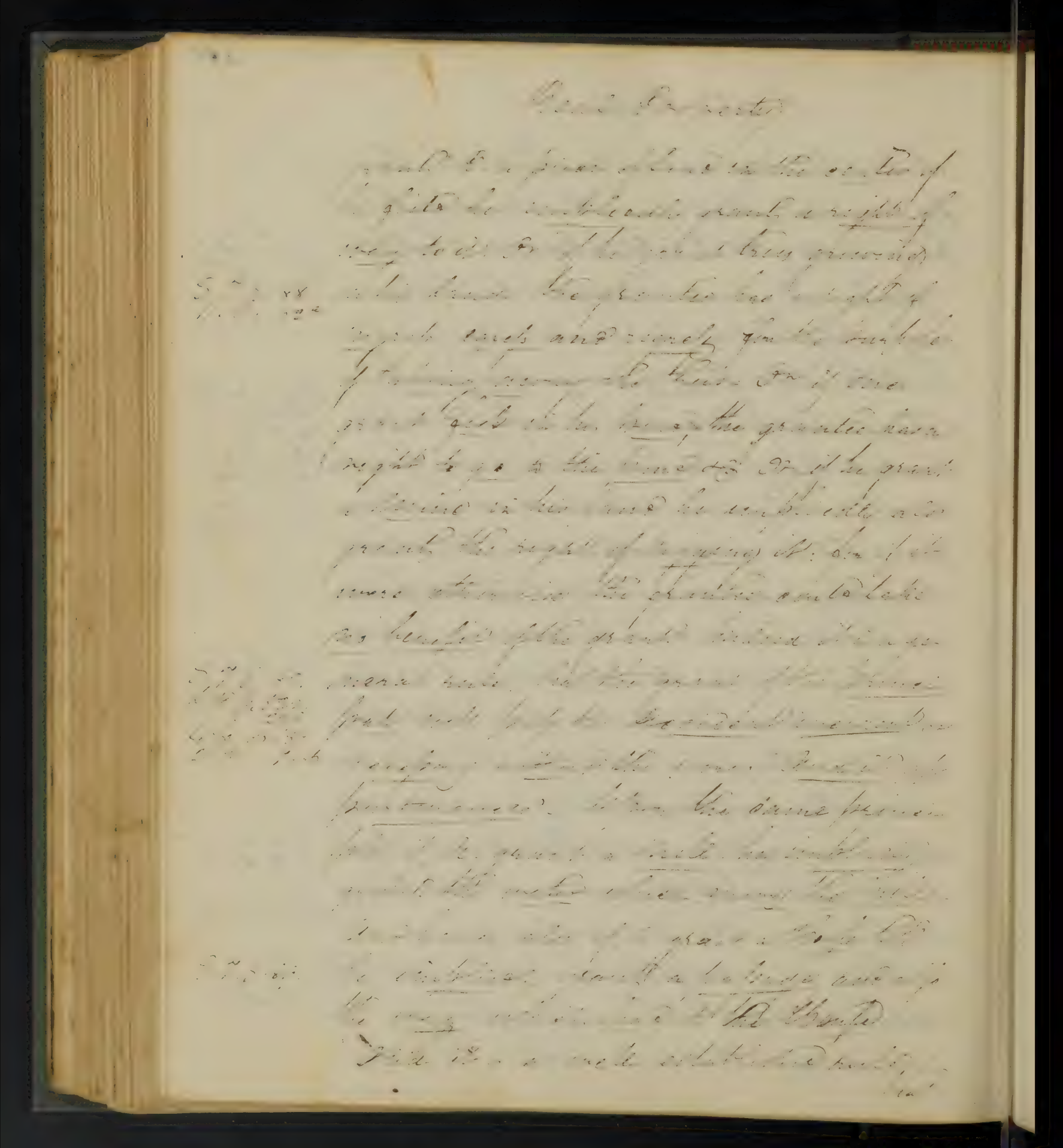
A deed may also be declared by Statute
(a) off the Roll: it is voluntary & may
be cancelled. 2 Bl. 308 309. 2 Co. 53.

Deed a deed may become void by a
subsequent agreement of the party with whom
it is entered into to give it validity
Deed a promise by agreement under
seal upon the after taken Husband & proved
one Witness a Deed may be given
in evidence by the Jury upon Issue
& a Court of Equity will enforce
it. But the Courts of Equity are re-
ported to give the most liberal construc-
tion, & will think a conveyance good & valid
that the Law would declare void in
the Court of Common Pleas.

For the different kinds of Deeds see
Real Estate Conveyancing.

(a) 2 Bl. 298.

2 Bac. Abr. 8
2 Bl. 307.
2 Bl. 295.

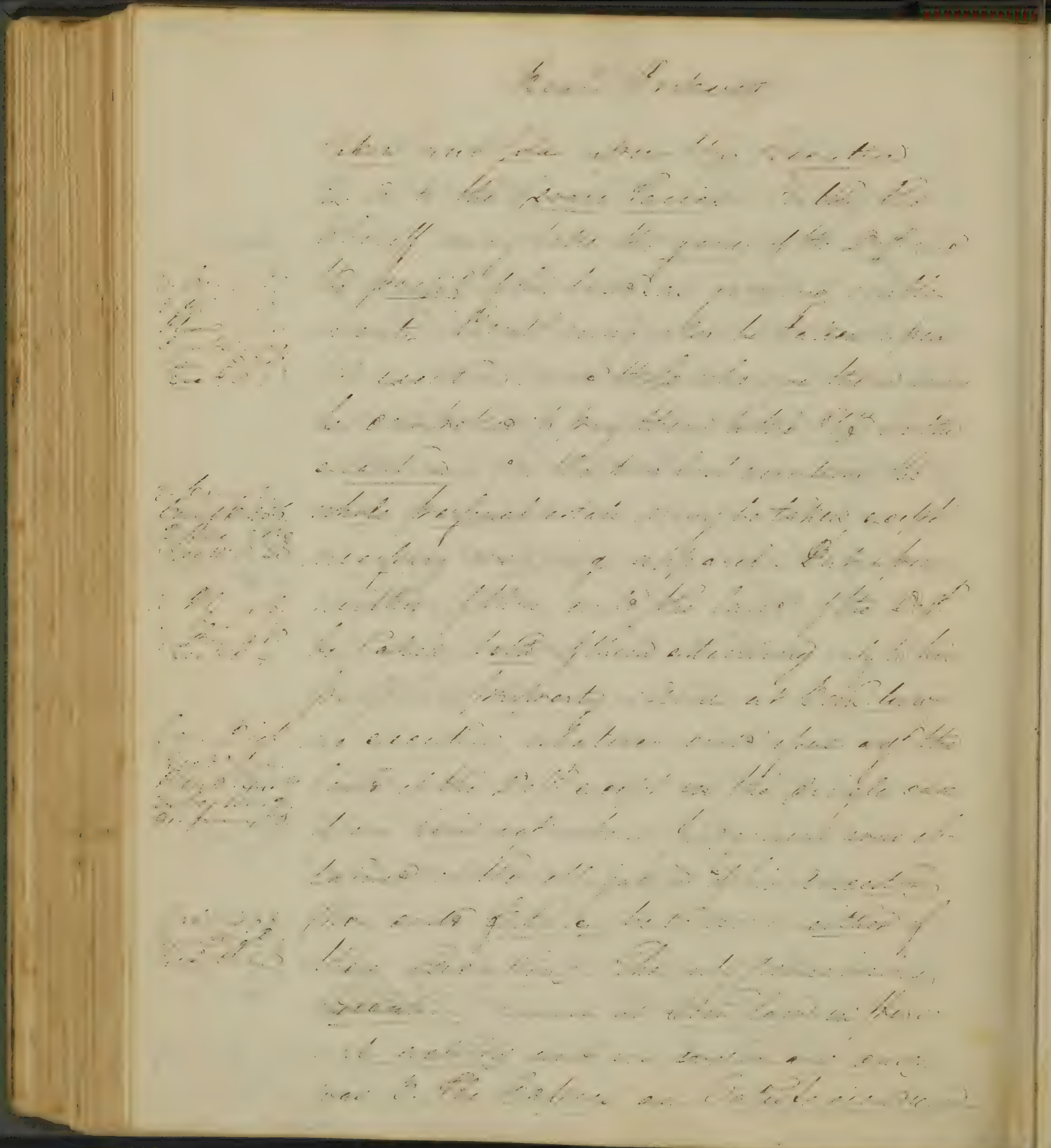


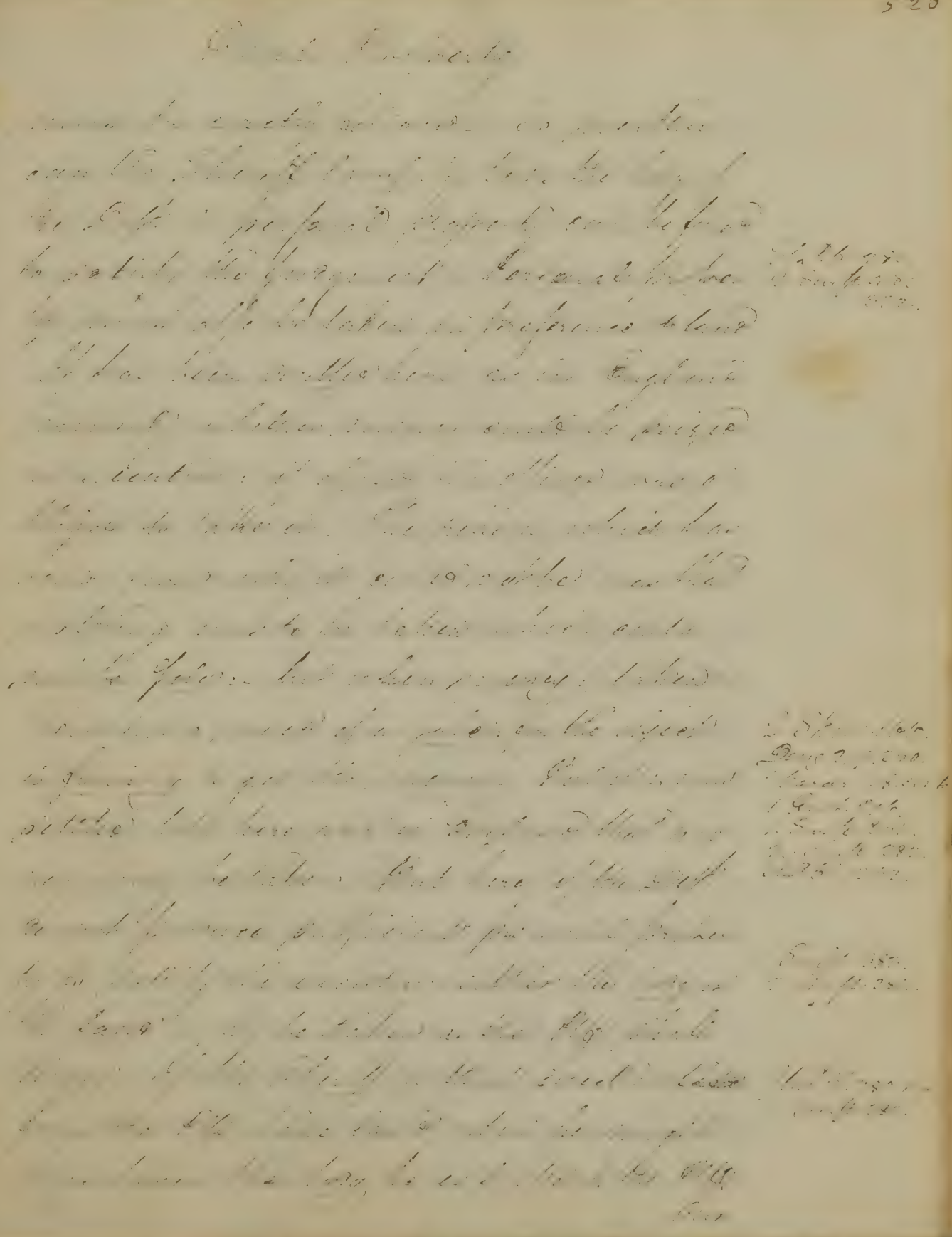
Title by Executors.

(Dated)

To Stat. 11 & 12 Vict. c. 63 s. 11 Copies of
a Conveyance have been ordered and
are produced by the Executors and
on the Record it appears that that
of England B. the Testator was the
only Executor there named and proved
of the Goods Chattels and Credits
of the Testator in England and
of the Effects Personal Estate
Testator: and of the Letters of Administration
thereon — (Or in whatever of the
cases the Grant may be)

I do by the first Section hereby
as the only the Sum and Effects of the
Testator in England. And the Executor
is hereby authorized to receive but
not to sell the Stock in the Funds standing
in the Name of the Testator (Whatever
is the Fact) Whereof
is also to be





Salt Chapter

a Tenant by Curtesy without giving
him Dower. The Statute of Glouc. & has
been held good. 2 Inst 434. & relates
that the Law was altered by Statute
of Merton & Westm. 2. & Bracton
affirmed that the Husband
ought to have Dower. & has also been followed
in Ireland. Lord Coke says that
such Estate is called "Tenant
by curtesy that Estate commonly
called Tenant by the Curtesy" Litt.
Sec. 52. & 53. & Co. Litt. 30. a. 1 Rol. 41.
Swift 335.
Tenant by Curtesy is where the
Husband is seized of Lands
Tenements or Hereditaments
in Fee simple or Fee tail
in right of his Wife & has
Issue by her born alive which
may inherit the Estate as Heir
to the Mother. & Co. Litt. 29. a. 1 Rol. 681.
Swift 333
Stat. 6 Ann. c. 18. 3
Dower is the Estate which
the Wife has for Life of the
third part of such Lands
Tenements or Hereditaments
as her Husband was seized
of in Fee simple or Fee tail
at any time during the
Marriage & which any Issue
of her body by him might

Rent Charges

Executions issued to lay the quantities
on the ground ought under the Seal of the
Court at will and still them as personal
estates: but the power is to be given [Ante 527. 5.
[illegible] under our Seal of Law

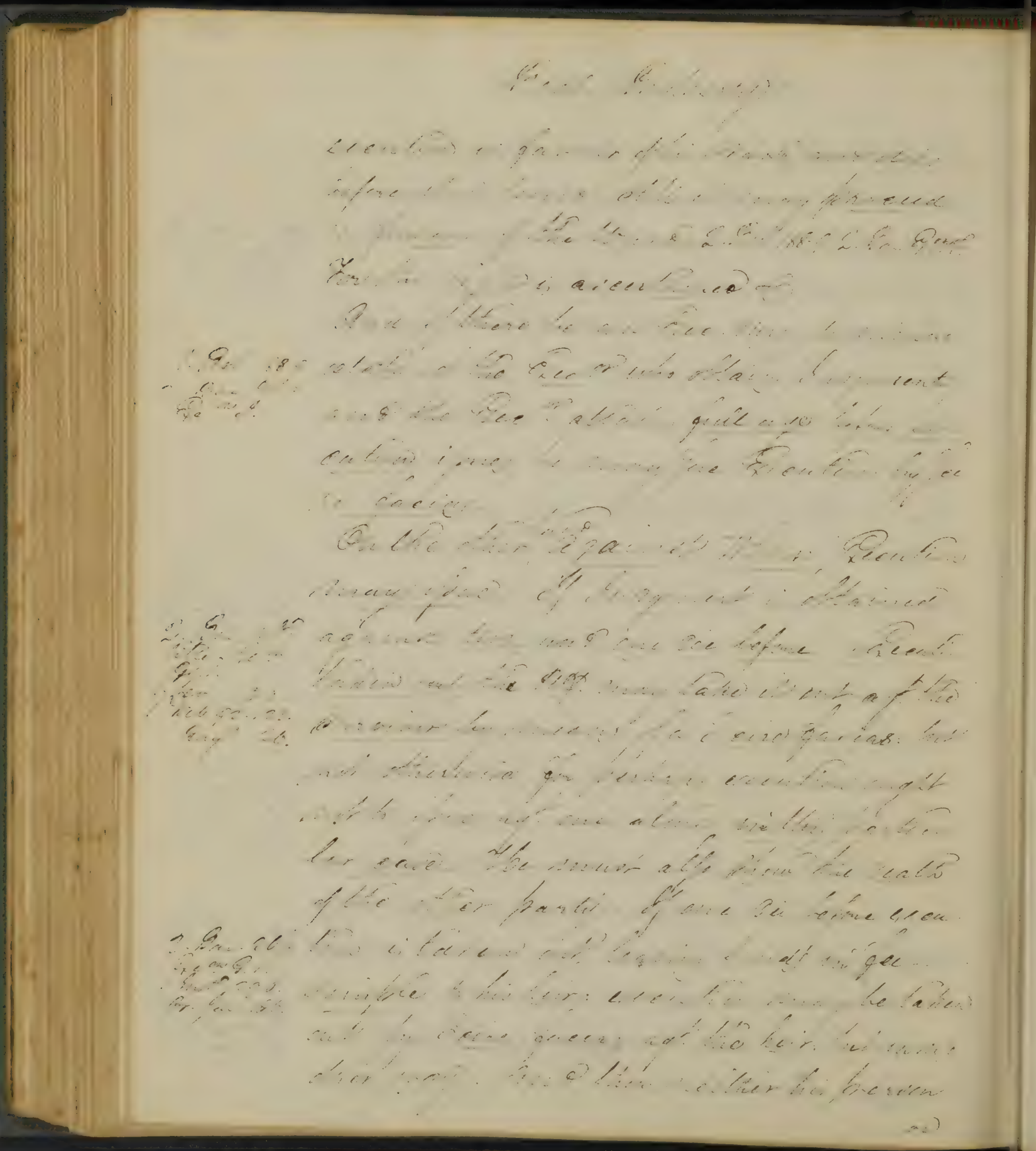
The writ cannot be to take
all the estate the tenant has in the land
and assigned it to the owner in Eng-
land per Com. Dig. Title R. 5. C. 4. Sal. 368.

In case Stat. 5 the Def. enfeoffed by
deed of all his estate the state [illegible] [Ante 22.
under the writ of inquiry was taken out [Ante 265.
[illegible] before execution issued [illegible] 335. 5]
the Def. in which Case it was proper given
leave to alt. the proceedings in case the
Def. appears and pleads issue after writ
being executed & duly satisfied: Else under
writ be executed, he after having made
the account is charged on the execution
But in [illegible] where the Def. is [illegible] [Ante 5.
in [illegible] and taken [illegible] the
[illegible] [illegible] [illegible]

Form [illegible]

July [illegible] 20 [illegible] [illegible]
[illegible] [illegible] [illegible] [

Real Property



Lord Carteret

18th Feby 1721

Fraudulent Conveyances

Lecture

This page of the Book is very important, & will be of great service in the Execution of the Statute of 13 Eliz. c. 5 & any other Statute made to defeat the Creditors of the grantor, & to be construed by the same Rules & Principles, and ought carefully to be perused by all Persons who are concerned in Conveyances. For though it is entirely upon Conveyances fraudulent as against Creditors, & not as against Purchasers, yet the Rules of Construction are the same in both Cases, & all Deeds, as against Creditors, are void, which are fraudulent as against Purchasers.

Gen. Rule

Rule Fraud. Conv. Void

Real Property

A Reconveyance from a Trustee to a Party by an upright clause in the Deed has only void as against the creditors

And a fraudulent conveyance within the 27 Eliz. c. 4 is void as against a subsequent purchaser for a valuable consideration, though the purchaser have notice of the former fraudulent conveyance: for it ought to have notice, i.e. of such deeds as ought to be registered. The statute of 27 Eliz. does not extend to copyhold lands

The same rule obtaining in case of Equity. It is also well settled that a fraudulent conveyance made by a person against whom a decree is made is void as against purchasers or mortgagees pendente lite, or incumbrancers after the decree

The same rule obtains in case of fraudulent conveyances of Life Estates made and obtained by a power reserved under such conveyances. But these are void

Real Property

The only cases for a conveyance that would on an original sale vest a good title in the purchaser would be where the grantee was a bona fide purchaser for valuable consideration without notice of the fraud, and the grantor was guilty of no fraud. In such cases, according to these statutes, the grant is actual and the deed void against creditors. Where the grantee is a volunteer, or where he is not a bona fide purchaser for valuable consideration without notice of the fraud, the grant is void against creditors, but the deed is good between the parties.

2 Atk 481. 520. 2 Ves. 625. Twyne's case. 3 Co. 80. Bingham's case. Cro. Eliz. 908.

5 Eliz. 25

Cont. Epist.

1 B.P.R. 412.
2 Burn 374.
3 Lee 10.
4 Ins. 268.
Rob. 196.

1 Sm. L. 730.
2 Bac. 123
3 Pal. 491.
Gal. 4 Inj. 344
4 Burn 374.

Gal. 1.10.
1 Thess. 2.4.
2 Thess. 3.8.

Gal. 2.1.
Gal. 2.10.
Rom. 15.26.
1 Cor. 16.1.
2 Cor. 8.4.
2 Cor. 9.1.

Deed to bar

an estate tail after the death of the tenant in tail of an agreement made previous to suffering a recovery to bar the estate tail and to create other uses in favour of the issue of the marriage or otherwise as the parties should think proper

1 Ves. Jr. 384
2 Atk. 33
1 Atk. 159
2 Vern. 103
3 Ves. 60

Deed to bar estate tail

Where there is an agreement previous to marriage for the settlement of the estate tail of the wife and the issue of the marriage and the settlement executed is not conformable to the agreement a Court of Equity will compel a conformity to the agreement

Deed to bar estate tail

Where there is an agreement previous to marriage for the settlement of the estate tail of the wife and the issue of the marriage and the settlement executed is not conformable to the agreement a Court of Equity will not only compel a conformity to the agreement but also as to the quantity of interest to the issue in case there be more than one child as the case stands at the time of the decree

Note the bond was given after the marriage

after the agreement & was made in pursuance

Real Property

Purchaser of an agreement made before sale, though the premises agreement were bespoken: because that is a good consideration, for the Purchaser can compare things in equity, and have them decreed. There are many distinctions arising under this division of the point.

Where the agreement made before sale was fraudulent, or not bona fide, and executed a conveyance, with notice, and engaged with notice of the agreement: though that Court will enforce it as against volun[illegible] and against the equity of the Husband. The reason of this is that the enforcing of agreements specifically Chancery exercise is discretion. And here the rule prevail that where the remedy is equal the legal title shall prevail. And in this case the equity is all because the husband pays and therefore acts without fee of the agreement and directly [illegible]

B. & L. 451.
2 Vern. 511.
Rob. 201.
208.

L. Raym. 727.
1 Ch. Ca. 270
Salk. 69
Rob. Jur. 8
220. 1 Atk. 2.

the

Real Property

The legal title (post) had the Husband executed [illegible] agreement the wife might have held even against the purchaser or mortgagee. Nor a settlement after marriage and even without any prior agreement, or without any other consideration than that of favouring one's family, is good as against the subsequent creditors of the Husband both at law and in equity. Where against whom the preference given to purchasers over creditors. Whenever an application is made to a court of equity to correct a settlement made after marriage in pursuance of an agreement before but which will never obtain its relief, so [illegible] not be set a purchaser for a valuable consideration even though he had notice, because they [illegible] a purchaser is not prevented to be overreached with [illegible] equity as he is with those of law, and therefore he not subjected to [illegible] equity as [illegible]

Ves. J. 1824. 1 Ves. 10 2 Atk. 120.

Amb. 288. 1 Ch. Cas. 268.

not

Deed Poll

[illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [illegible] [illegible] [illegible]
[illegible] [

Real Property

Of lands upon agreement for a settlement made after marriage in which
Settlement. a husband has agreed to settle
Of lands upon agreement for a settlement made after marriage in which lands of the wife are comprised
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration
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Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the
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Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the wife's estate being settled
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Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the wife's estate being settled for the
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Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the wife's estate being settled for the benefit of
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the wife's estate being settled for the benefit of the
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the wife's estate being settled for the benefit of the husband
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the wife's estate being settled for the benefit of the husband and
Of lands upon agreement for a settlement made after marriage upon valuable consideration of the wife's portion and other valuable consideration of the wife's estate being settled for the benefit of the husband and children

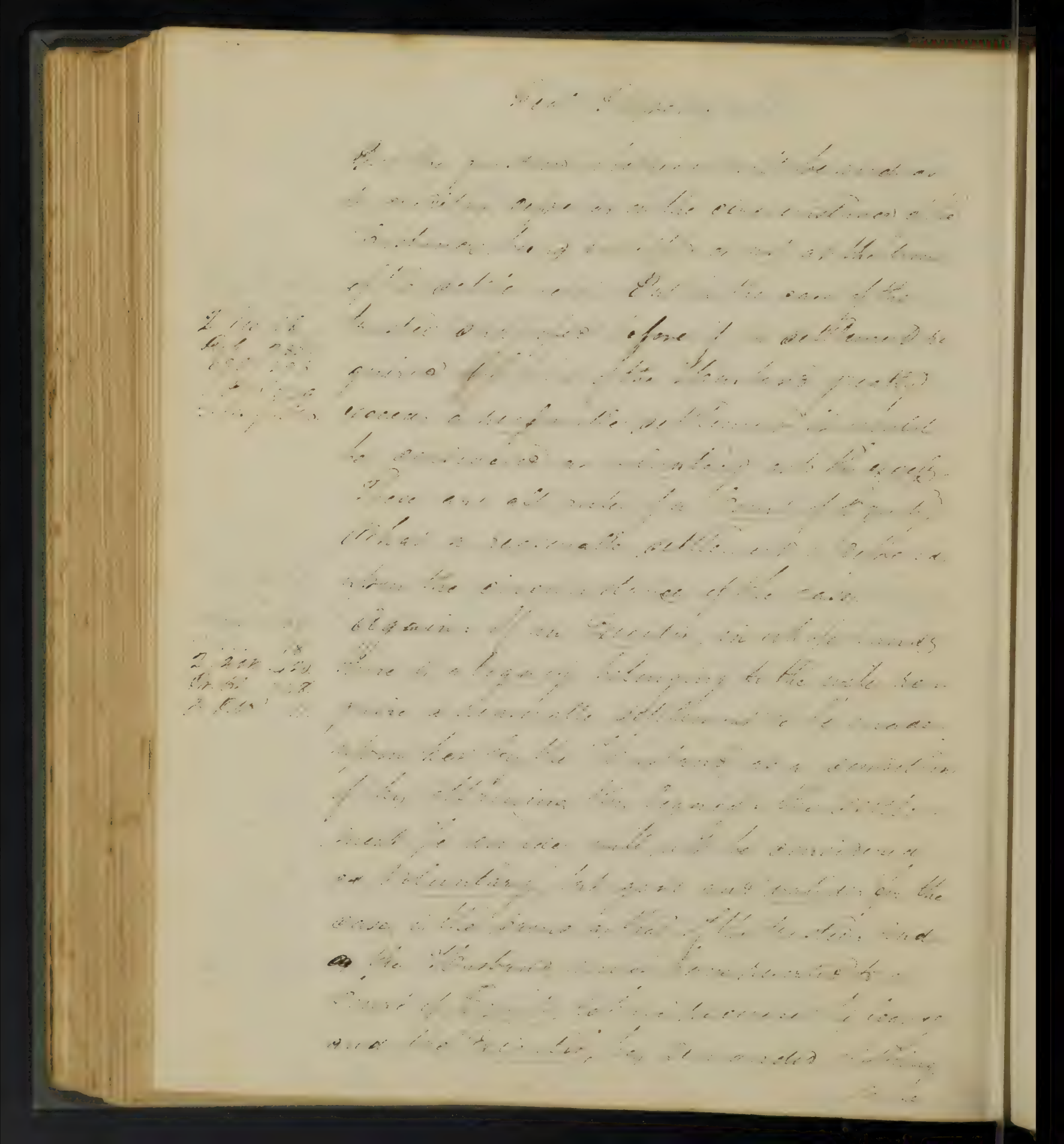
Feoffment

consideration of a Marriage being
intended to be had & solemnized between
[illegible] & [illegible] & for the better
support of the Estate intended to be settled
as hereinafter mentioned & for the
[illegible] of
a Power of Revocation, uses & limitations
& Powers to be hereafter mentioned
& expressed of & concerning the
same premises & of the Rents issues
and profits thereof & of every part
thereof for the Settlement & Assurance
of the Estate to become the Property
of the Issue of the said intended
Marriage & in Default of such Issue
as the said [illegible] shall
by Deed or Deeds Writing or Writings
sealed & executed by her in the
presence of & attested by two or more
Witnesses or by her last Will & Testament
in Writing or any Writing or Writings
in the Nature of her last Will & Testament
to be by her duly executed & published
or for want of such Appointment
& subject to such Power & Provisions
as aforesaid to the Use of the said
[illegible] for his own absolute Use
& Benefit

Part of the Estate
[illegible]
[illegible]
[illegible]
[illegible]

Part of the Estate
[illegible]
[illegible]
[illegible]

[illegible]
[illegible]
[illegible]



Chief Justice

If after marriage before any Decree of Separation or Act of Divorce a Husband or Wife shall commit Adultery and the innocent Husband or Wife shall afterwards cohabit with the Offender such Cohabitation shall be deemed a Condonation of such Adultery and the Innocent Husband or Wife shall not be entitled to any Decree of Separation or Divorce on account of such Adultery

If any Husband or Wife shall after the Commencement of any Suit for Separation or Divorce commit Adultery such Husband or Wife shall not be entitled to any Decree of Separation or Divorce on account of such Adultery unless such Adultery shall be proved to the Satisfaction of the Court before the Hearing of such Suit

And whereas it is desirable that a Husband who shall have committed Adultery and against whom a Decree of Separation or Divorce shall have been pronounced should not be entitled to any Benefit under the Settlement made upon Marriage or under any Covenant therein contained for the Benefit of such Husband or any Children of the Marriage

Real Property

[illegible] from the court during [illegible]
is subjected to make the settlement under
in consideration of the property which he
was to retain by her.

[illegible] of the parties in controversy
and even pending a treaty of marriage
became a settlement on the property after
celebration by a fair marriage such as
deemed with the good faith of the husband the
he had no notice of the settlement in order
that the claim of the difference between
this and the case heard pursuant in the
litigation which parties are under to do
from their obligation. This point will
scarcely deserve consideration as such case
stated not into as will be intended that
husband has a right to property and
and their marriage. [illegible] Courts are
civil law case of the conveyance [illegible]
has established it as [illegible]
property [illegible] the husband [illegible]
[illegible] the husband [illegible]

Local Legislation

a settlement in the usual manner of the settlement made for the wife or the children. But in the other case of the husband's dying before a settlement was made on him by his wife (especially succeeding the first) a settlement made in the ordinary manner before bedding will give a power to sell free from the claims of creditors

And finally it is common in the case of marriages, that a certain sum is agreed to be given by the husband's father to the husband, and the husband by way of security to the wife's friends gives a bond for the payment of the same money at the time stipulated.

And in the other case a mere bond given by persons in trade after the marriage does not affect the husband's property

Q. Geo. 3d. c. 87. s. 1. Stat. 21. G. 3. c. 19.

Real Property

Marriage with previous settlement to bar dower on the case of ejectment. But the case may be, and frequently is made by the husband in favour of the wife at the very time. The power in virtue of the will [illegible] the Hus- 3 P.W. 95. 99. 3.
band [illegible] Pr. Ch. 330.
6 V. 338. note.
where and how [illegible] and by whom the settlements are, and ought to be ascertained

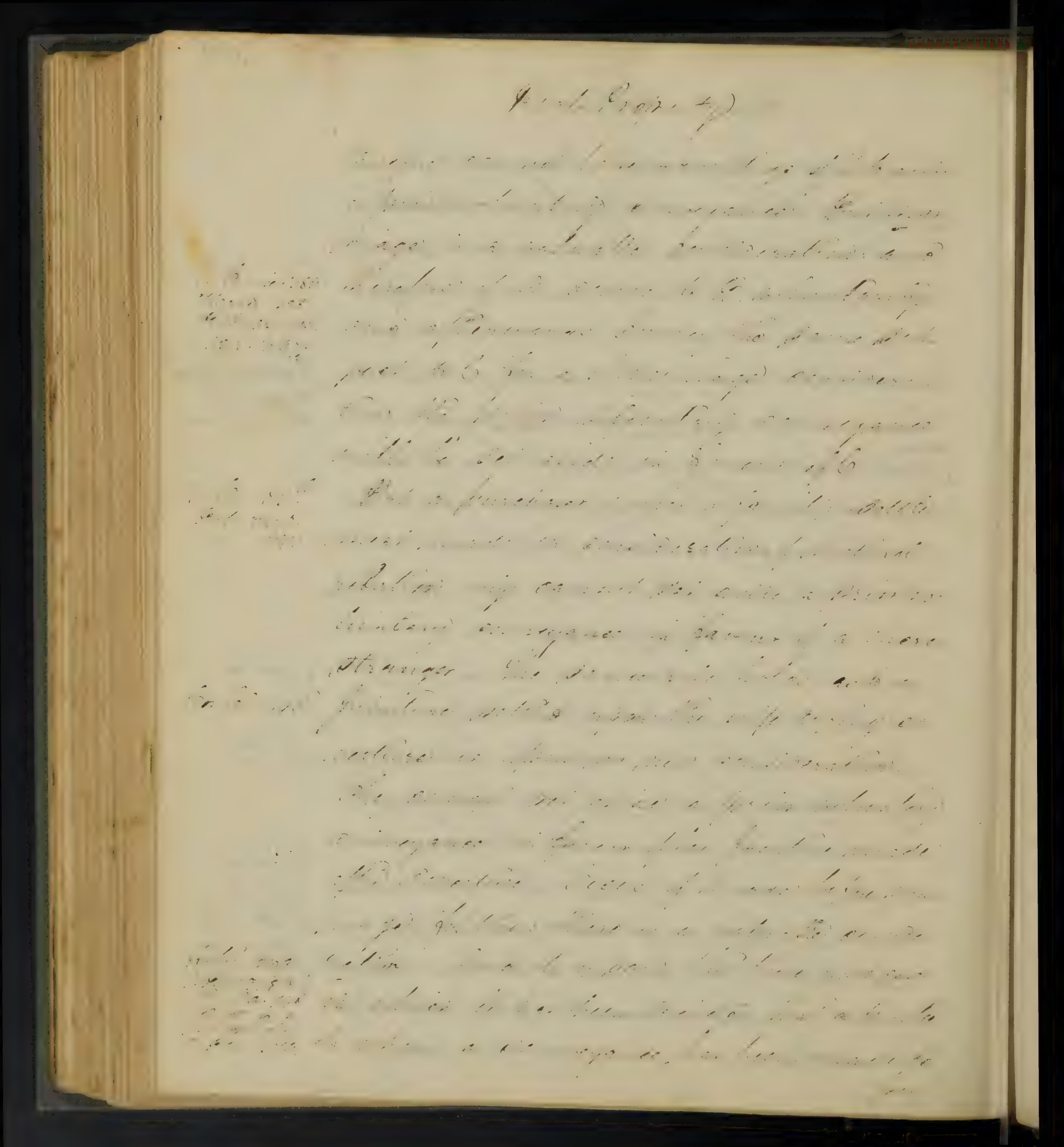
ejectment

Title can take advantage of the 31st 2d. and 32d Elizabeth [illegible]
Acts [illegible] 31st of Elizabeth

Under the enacting [illegible] General 3 Leon. 81.
Words, [illegible] other than a purcha- Comb. 74. 75. 12.
ser for [illegible] and for a valuable Salk. 66.
consideration, [illegible] 3 Mod. 326.
[illegible] 6 Mod. 44.
Gilb. 396
Mod. 264. 270.
322. 425

[illegible] subsequent [illegible] General

Creditors



Real Property

[illegible] the grantee will [illegible] a bona fide purchaser for valuable consideration [illegible] the grantee can protect himself against the grantor's creditors [illegible] the grantee will be allowed to avoid the conveyance on the ground that it was made [illegible] valuable consideration

But with regard to conveyances [illegible] valuable consideration, where one [illegible] purchases [illegible] a valuable consideration it is held that the [illegible] of [illegible] no question that getting [illegible] a fair valuable consideration

But incumbrances of [illegible] encumbrances of [illegible] circumstances [illegible] and [illegible] between the [illegible] to ascertain a fair valuable consideration [illegible] the grantee will [illegible] against the grantee [illegible] the validity of the deed [illegible] in this case he is not a purchaser bona fide, and if this were not the case the [illegible] of the fair valuable consideration [illegible] the

when the grants might be closed. And though I have no doubt of proving to a considerable extent the fraudulent [illegible] I am not sanguine enough to expect that the Commissioners will [illegible] the purchase, unless the Act of Parliament which constitutes the Board, is so altered as to give power to the Board to grant or refuse grants for an adequate consideration after they have examined into the claims, & have obtained the grantee, the grant not to be made a positive [illegible] [illegible] [illegible]

Real Property

Read and Pratt and Hamlin and Lawrence

any question to Court & Jury should decide whether Court & Jury should decide whether the case can be brought within the exception by reason of mortgage and whether the deed of Pratt & Lawrence to Hamlin & Lawrence was executed by the mortgagor in contemplation of insolvency and whether Hamlin & Lawrence had reasonable cause to believe the Conveyance was made in fraud of the Bankrupt Act and whether the transfer of the stock was void in favour of the Assignee or was valid as against the transfer for value the Conveyance is an absolute transfer of the stock when the eventual duty to sell & pay consideration whatever is altogether contingent. Could such conveyance in such a case be a Bona fide transfer of the property and where there no proof that it was made with intent to defraud the creditors of the grantor and there no proof that it was made with intent to defraud the creditors of the grantor and there no proof that it was made with intent to defraud the creditors of the grantor and

Real Property

To constitute a purchaser within the Stat 27 Eliz. the purchase must be of the whole thing which was the subject of the ~~purchase~~ conveyance

And if the purchase is not of the whole thing the purchaser can take no benefit of the Stat. Thus where A having a lease for 99 years upon condition to pay a fine for 20 years assigned over to B for a valuable consideration, it was holden that he was not a purchaser within the Stat.

The conveyance also contained the words of his interest in the land which conveyed the granting interest as between themselves tho' it did not set out a pecuniary consequence. But if a valuable consideration be found it is immaterial what species of interest is purchased. In this case it is not material whether the purchase be of an actual future interest or the making a disinclinement of an interest at future day for a valuable consideration is a

Real Property

a Purchaser within the Statute and must take
the benefit of it. And this notwithstanding
the Consideration only is a Covenant to
stand seised to the Use &c. If a Man pays the
Purchase Money and procures a Conveyance
to the Use of another, or another by the
Direction of the Purchaser pays the Money
and takes a Conveyance to the Use of himself
only the latter case will raise a Trust for the
Purchaser, and not the former. For in the
former case the Money was a Gift to the
Grantee, but in the latter case the Grantee
was a Trustee for the Purchaser. And
therefore, tho' the Grandfather
Father and Son the Grandfather made a
voluntary Conveyance to the Grandson
and died. The Father made a Mortgage
for a valuable Consideration and died
and then it was held that the Mortgagee could
not set aside the voluntary Conveyance
because the Father had no interest in the
Estate at the time of making such Con-
veyance. So the Father here & the Person
claiming the Estate under the Conveyance

Cro. Eliz. 394
Cro. Jac. 8.
2 Vern. 249.

1 Vern. 427.
Abr. Eq.
p. 382.

Cases

Real Purchaser

voluntary conveyance but the Purchaser for valuable consideration may take advantage of the voluntary conveyance. But if a Bankt. & Grantee of voluntary conveyance both run their equity & voluntary conveyance to C. and C. puts in a valuable consideration: now C. cannot avoid the fraudulent conveyance tho' it be first recorded, for the Grantee of voluntary conveyance was made to B. & consequently C. had no notice at the time of the deed, because B. had the first conveyance and has equal power with C.

2. Def. seems to be settled in equity that a Trustee under a voluntary Settlement or will cannot become a valid Purchaser so as to avoid the settlement in favour of the cestuy que trust, tho' he purchase for a valuable consideration

And

6 Co. 72. Rob. 379. 385.

Rob. 385.

3 P. Wms. 258. 3 P. Wms. 258. Rob. 386

Read Recovery

Deed of a trustee by the direction of the cestui que trust makes a voluntary conveyance to convert a limited title into a fee simple of the estate, gives the purchaser, without notice, no title against the voluntary conveyance — because the second conveyance is made in equity by a stranger to the first. But a person who makes a purchase in his own name with the money of another is a trustee for the owner within the Statute and a subsequent conveyance for valuable consideration by him in pursuance of his trust does not take away the legal estate from the trustee and trust — And a second purchaser having any part of the money in his hands may be a purchaser within the Statute as well as if he had purchased the land itself. He will set aside the first conveyance and the first trustee and in general all incumbrances

Dow. 15. Rob 301

3 Ves. 692 Ves. not to the Volunteer Conveyance D. L.

done

Real Property

[illegible] [illegible] [illegible] [

Head Quarters



Real Estate

Real Interest

should prevent the "and with the fraudulent intention of defeating the obligation of the Damages. Either the grounds of the decision of the Court of Appeals were, no doubt, sufficient to have induced the Court to set aside the verdict, and order a new trial; but they were not sufficient to warrant the Court in entering a judgment non obstante veredicto. (Bull. 336-8.

It has also been determined, that a settlement with the Executors of a deceased partner in Damages only, cannot be defended by the Executors after the Executors discharge of the partnership Damages: because at the time of the covenant there was no legal debt or duty by the obligation. And there can only Retrial fraud" will entitle the covenantee to have the covenant delivered. The same answer would be given if the covenant was to stay Damages in Execution: or if there was a bond or a tender of money: because here the claim is

Pr. K. 1. Ent. 2.

Retention

Real Property

"Estates in Fee Simple" "Fee Tail" "Estates
in Dower" If one person becomes entitled
to a common Law Estate in Land by the
words "and the Heirs" his ownership of the
Land is said to be of the nature of a Fee
Simple or Fee Tail according to the
Estate which he takes. If he takes an Estate
for Life only he is called a Tenant for Life.
If he takes an Estate for a term of years
he is called a Lessee for a term of years.
If he takes an Estate for a Quarter or
a Month he is called a Tenant from Quarter
to Quarter or Month to Month. If he takes
the Property during the joint lives of
himself and another person he is called a
Tenant pur autre vie. If he takes an
Estate for a Quarter or a Month or
a Year he is called a Tenant from Quarter
to Quarter or Month to Month or Year to
Year. If he takes

Real Property

be vested in the grantee as to the grantor
entirely, though he was indebted at the time
of granting it: because the property was
not a fund to which they could have
recourse had it not been sold: and therefore
they have not been defrauded.

But if the person having a power over
property in another's right make away
the property voluntarily in favour
of a stranger, it is void as to the creditors
of the person granting it: because such
a gift is considered as fraudulent and void as
against creditors. And so much agreed
the antients) gives him of the conveyance
in trust (in the language of the law) the
property is altered and becomes vested
in him in the same manner, as
over a man having a general power
of alienation over property makes
a voluntary appointment of it. Real
estate in trust for a married woman
shall not be liable to the creditors of the
husband because such person might

make

Real Property

case in this case of the wife and has a mere beneficial interest for the use of the creditor E. S. gives property to the use of the debtor whatever right the E. S. shall acquire of this property however is liable to equity and because it is nothing more than a covenant.

Eq. 4-5th

Where the power of appointment is personal however the rule does not hold. So where A. gives power to B. to vest the legal title in B. and C. upon B. has no beneficial interest in it.

Eq. 6th

A voluntary bond while it binds merely in contract in equity is void as against Creditors. It is undoubtedly as much void at law as in equity. But it is generally set aside in a suit of Equity because while it remains in contract Creditors a discretion, to institute suit or not until the third till execution, it leaves the debtor at liberty to sell the property and thus defeat the same property and thus defeat the creditors

Real Property

the grandson after execution. After the allegiance death it was held void, as a voluntary conveyance by which all the real property was vested: & 2, upon which to found an action in Equity for the Execution of the deed: which the Plff. may perhaps (the voluntary) avoid by suit.

2 Ch. Rep. 85.

2 Ch. Rep. 85. 1 Ch. Rep. 124. 1 Ch. Rep. 22.

A deed of conveyance in favour of his daughter is a very strong case. Thus where a father gave a bond to his daughter and retained the possession of it till his death it was held void as against his creditors. But a voluntary bond is in general good against mere volunteers: as the legatees of the obligor: therefore such a bond is not to be disputed by the obligor himself, nor is it to be disputed by his Executors, unless there is a deficiency of assets to satisfy other bonds creditors.

1 Ch. R. 124. Cro. Eliz. 565. 6 Co. 18.

And even where a voluntary bond has been delivered up to be cancelled a Court of Equity has power certain circumstances

1 Vern. 296. 2 Ch. R. 87. 1 Ch. R. 124.

Where

circumstances decreed a performance of it as ought more voluntary. Thus where a Husband after marriage gave a voluntary bond conditioned to settle a jointure, and it was given up to the jointure being settled, it was decreed to be restored in Chancery when the jointure failed after. And if a bond or any other obligation is voluntary a judgment confessed upon it will be so. But as the rule of evidence where a judgment is claimed to be in satisfaction there is this distinction. If the judgment mentioned to confession is claimed to be fraudulent the onus probandi lies on the Plff. in the judgment and he is to show that it was founded for a just debt. But if it were pleaded by Deed the onus probandi lies on the party claiming it to be fraudulent.

2 Vern 120.
Bull. 259
2 Vern 120.
3 Atk. 393.
2 Vern 240.
2 Atk 220.

But though a voluntary conveyance or contract of any kind, is fraudulent, yet the mere preference of one creditor to another

Real Property

a certain will not pass any conveyance
or contract whatever executed after the
execution thereof as against persons
interested by the passing of the Act unless
such conveyance or contract be duly proved
or acknowledged in the manner required
by such Act or by the Act passed in the
present session of Parliament intituled
An Act for the more effectual
execution of powers of sale and leasing
powers created by Deeds and Wills
and for the better assurance of titles
to purchasers thereunder and for
granting powers of sale and leasing
powers to trustees of settled estates
and for other purposes

The proper place to be the Office in England
in which the enrolment of the grant under the
Act should be made is [illegible]

Real Property

In the Matter of Forest Trees upon Private
Roads and Footpaths which have been dedicated
to Public Use and for Ornament
of the Grounds adjoining or near thereto

Whereas it is expedient that provision should be made in the Law of England for the preservation of Forest Trees upon Private Roads and Footpaths which have been dedicated to Public Use and for Ornament of the Grounds adjoining or near thereto: Be it therefore enacted by the Queen's most Excellent Majesty by and with the advice and consent of the Lords Spiritual and Temporal and Commons in this present Parliament assembled and by the authority of the same that the Owners of Forest Trees growing upon Private Roads and Footpaths which have been dedicated to Public Use and for Ornament of the Grounds adjoining or near thereto shall not be entitled to fell any such Trees without the consent of the Lord of the Manor within which such Trees shall grow or of the Majority in Number of the Owners of the Property adjoining such Roads and Footpaths

Short Title

And be it enacted that this Act may be cited for all purposes as the Forest Trees Act 1851

Real Property

conveyance, no matter in favor of a purchaser
for a valuable consideration from the fraudulent grantee, but is to be treated
as a mere nullity; and a creditor may
seize such property

Under the Statute of Elizabeth a voluntary
conveyance whether in writing, or by parol
(that is the mere delivery of possession
without any writing) is void as against
creditors, whatever may be the intent
of the grantor, unless it be upon a valuable consideration, and
for the fraudulent grantee, will hold as
against a bona fide purchaser with the
original grantor — In some cases of
Marriage — Settlement a constructive
consideration & post facto will be held
sufficient & conveyance primarily void-
able, as fraudulent bona fide pur-
chaser — But mere relationship
alone, has never been held to be such consideration
as to support a conveyance under this statute
as has been settled by a treaty of this
state

[illegible]

[illegible]

[illegible]

page

Land Property

Parliament with due regard to the appearance of protecting under these circumstances, because they appeared to be regular and authentic evidence of the Crown's own act in writing. On the other hand a declaration originally good and valid cannot be forfeited by any matter of fact done or thing omitted by the party who claims the benefit of it, unless some person can be pleased to it

But in every compensation to be estimated to the grant of Rent in fact which is applicable to the analogous principle of the English law. A grant can never be good title to the grantee against by lapse of time a right of action from the following that the right is taken to be brought after the date of the deed. There is however not a rule to be found in England

The Statute 16 and 17 Eliz. c. 16 all

Real Property

Penal Statutes, & Grants are to be construed liberally for the purpose of suppressing the fraud and enlarging the remedy. (Bac. Ab. Forfeiture, Introduction) - So far as they respect the Jurisdiction created thereby and goes part of a Code, they are to be construed liberally so as to enlarge the Remedy - But so far as respects the penal part they are like all other penal Laws to be construed strictly) - So that a case not within the Letter of the Act cannot be brought within the Intent of it

And as the Statutes are to be construed liberally for the purpose of suppressing the Fraud it has been decided that if a tenant for life commits an act of forfeiture the remainder Man has a right to the exercise of the Power to avoid any Defeat that forfeiture, though it is not within the Act being in great contempt

1 Bl. 88.
Bac. 552.
2 Co. 82.
Cro. Jac. 478.
1 Sid. 141.

1 Vern. 324.

Real Contracts

In executed, what are fraudulent conveyances? How are certain conveyances
x afterwards
badges of fraud? Some of which also affect
wrongs attend such conveyances.

The following are among the principal.

1. A ground being general, including all the granted property is a badge of fraud. By a Badge of fraud however is meant only prima facie evidence of fraud.

2. A second Badge of fraud is, the grantor's remaining in possession after the time of the conveyance. But this is not always strong evidence.

3. The deeds being made in secret, is usually a badge of fraud though slight.

4. The deeds being made by the party indebted during the pendency of an action against him is another badge of fraud.

5. Circumstances creating an apparent trust between the parties is a very strong badge of fraud. By this is meant a

Real Property

mere colourable conveyance

6. For insertion of unusual clause, in a deed of conveyance, as to fraud case, to amount to a badge of fraud and a certainty sign in that case.

7. Another badge of fraud, arising from the circumstance of retaining the possession in the absence of the grantee.

8. For setting aside the fee-tail of land, & another very strong badge of fraud.

9. The granting being deeply involved in debt is another badge of fraud

10. And finally, the insertion of a clause of revocation in favour of the grantor, is one of the strongest badges of fraud that can occur.

These two are selected as the principal ones, or badges of fraud, in a conveyance. But there may occur many others.

All these three badges of fraud however are to be proved impeached only as being intended to prive the 5th Statute of Eliz. c. 4. [illegible]

2 Bac. Abr. 328 Gilb. L. & E. 38

Cook & Lucas

[illegible] there is such an apparent
[illegible] between the grantee & the
[illegible] land & a conveyance upon
[illegible] shall be taken to be a valuable consideration
[illegible] the conveyance is prima facie
[illegible] Of this Judge of fact & the grant-
3 T.R. 621. 4 Ves. 248. 1 Ves. 245. 256. 1 Bro. 44. Cas. 194. Eq. Ca. Abr. 356. 5 Ves. 571. ee, pleading & proving a fact on
[illegible] consideration, and of the payment and
[illegible] Because, such presumption is incon-
[illegible] with the grantee's right, and will con-
[illegible] sider to prove a trust. [illegible] is
[illegible] 2 Atk. 382 & 3 Ves. 8 & 9 [illegible] a trust
[illegible] presumption [illegible] rebutted [illegible] parol
[illegible] [illegible] of consideration is [illegible] always [illegible]
[illegible] 4 Ves. 248. 5 Ves. 571. 1 Bro. 44. 1 Ves. 245. 256. The proper ground of the last head is that
[illegible] the purchase money [illegible] with the
[illegible] conveyance is [illegible] of a trust [illegible] between
[illegible] the parties. Though [illegible] by the grant-
[illegible] ee after an absolute [illegible] in all cases
[illegible] a charge of [illegible] yet it is [illegible]
[illegible] in case of [illegible] [illegible]

the

Plead Continuity

the conveyance of absolute Interest from the Grantor and there are Title deeds to which one can have recourse - But of Copies of Deeds, and the Pedigree prepared in one of the Sale Offices

The production obtained by the Grantor of the title deeds in a very strong Case of fraud: because the Retaining the evidence of the Title which is strongest Part of the Case - The granting possessing in Reliance thereon however after one a Sale one - Conveyance is only a Ground of proceeding by Injunction to obtain - there being a Practical difference between Deeds and Circumstances as Evidence to found proof - and the Title which one only presumptive in Cases of fraud - in the Grantor and Grantee combined on the part to Retain Deeds and Pedigree - Thus if the Grantor retains the Deeds to Grantee on the Purchase of Title it is Evidence on behalf of the Grantee the Grantor in one case, as against the Grantee

Real Property

Conveyances has been stated, and the word "absolute" is contradictory. For if the deed is not absolute the relation of the grantor, mortgagor and grantee into the conveyance cannot be ascertained, no evidence of fraud. It will not be evidence of a trust if the grantor is in possession under a conditional conveyance. [illegible] a conveyance to B, when a condition precedent [illegible] to B, then a conveyance of [illegible] to B, upon a condition subsequent [illegible] matter, not whether the [illegible] of the conveyance, [illegible] deed shall stand, the [illegible] is the same, to [illegible] — A mortgagee remaining in possession, is not a badge of fraud — for he does not consider himself, nor does the law consider, [illegible] having the legal title — A mortgage of goods, under the Stat. 29 Car. 2 [illegible] and regd. if the Mortgagor remain in possession — But this relates only to bankrupts' goods, [illegible] to prevent confusion in the Ding

2 Salk. 553
2 Str. 1145
2 Ld. Ray. 1364

2 Bac. Abr. 11
2 T. R. 7. 8. 63

1 Ld. Ray. 116.
2 Ld. Ray. 1208
5 T. R. 235.
5 T. R. 226.

passing the authority. It is however clear that grants are held to an implied covenant that the grantor will not by delivery of them to the grantee, in pursuance of such grant, immediately destroy the thing granted. This certain, whatever may be the construction of the deed, in Delivery of Escrow. Such is put not only upon the Deed in Fee but also under the Statute of Uses.

And where though the Deed of grant is absolute, immediate personal delivery of them would be attended with great inconveniences to the parties, the grant of old has been holden to be no longer in force but a mere symbolical delivery has been adopted instead.

Besides the enumerated kinds of grants the parties may invent others of the same nature as they please to be called that a grant by parol

Parol

Real Property

Running the boundary of the land of the grantor is void under the Statute of Frauds & perjuries as to the land which the grantor is entitled to hold or obtain against this parties, or not affect the boundary, even in equity; and this rule does not infringe on the Common Law under the English Statute of Frauds & perjuries, if one purchases land with intent to commit an act of gratitude, and the consideration is an office which amounts to a gratuity, they cannot have it performed as of the thing and the land will be divided notwithstanding but where one conveys, and takes back covenants and then for valuable & future, there is a presumed gratuity & void. The Statute of Frauds, not avoiding the deed but only the covenant & is void as to the grantee & his heirs

(Lecture

Ref Stg. 2d.

Ref Stg. 2d. Com. 2 Fo. 2. Chan. 201

heirs

Lead Contracts

different construction ought to be given

In Wood for Gardiner & Trowbridge
Cro. Jac. 198 it was adjudged by the
Court upon a writ of the benefit of the Statute
Dyer 248 b. 249 a. pl. 49 that the Statute
Bro. Ab. tit. Statutes pl. 98 is to be construed favourably that the benefit
extended to the benefit of them that had
a right to treat the avowry notwithstanding
by words it was of the manor and land when
in truth it was only of grandeur ayd & grandeur
Bro. Ab. tit. Statutes pl. 98 & Dyer 248 b. pl. 49 that it being found that he had avowed
upon a lease for years made by the grandeur
ayd & was upon the ground of the statute
it being considered that he had a right to avow

Bro. Ab. tit. Statutes pl. 98 Dyer 248 b. pl. 49 And upon this it was held that a grandeur
that commences by words of the present
tense at all events is to be taken to vest
Dyer 248 b. pl. 49 Bro. Ab. tit. Statutes pl. 98 in the common case of a sale of
Cro. Jac. 198 goods & payment & delivery are mutual
conditions & neither party can sue the other
without averring performance on his part
Dyer 248 b. pl. 49 Bro. Ab. tit. Statutes pl. 98 & that
as being the part of the grantee though it is

Real Property

the performance of the grantee. And if one having power a fraudulent power over a debtor, by creditor, the property so vested after his death as after in the hands of his heir for the payment of his debts. & heirs & the property of a person shall never be taken in execution for the payment of his debts, but it shall be held by the judgment, decree, and the heir shall account for the payment of debt.

In England if one by will devises land contrary to the real property, his devise to the contrary notwithstanding, the land descends through his heir at law. Land devised may be taken in execution for debts of the testator.

Cr. Dig. 811.
2 Bac. Ab. 143.
Bull. 346-3
Ves. 95.

C. Dig. 812.
3 Ves. & Bro. 170.
Powell. 96.
Dig. 61. 121.
3 Ves. 66.

Personal estate shall be first applied to the payment of debts. Devises & creditors by simple contract can obtain payment previous to the granting death. And in this case devise creditor is not injured by the fraudulent conveyance since he has no claim in the first place

Real Property

Q was made in an action aft. the law
upon the decease of the trustee that
the conveyance was inoperative, but only the
assignment of a debt by Record: for the estate
thus conveyed is considered as real estate.

5 Co. 19. Ufford 182 Cr. Eliz. 233.

And the rule, that a fraudulent conveyance is strictly void, & the estate
that a fraudulent grantee has under the
10 Eliz. c. 5 to take possession of them after
the death of the grantor, in some case, has
existed as Under de Bordent - and for the
purpose of determining, when he is to
be deemed and when not, the following
distinctions are to be observed. If the fraud-
ulent purchaser, after the death of the own-
er, takes the goods even by permission of the
executors they are among the assets charged as
as Executor de son tort to the creditors. This
Mr Hurlo says is great, stressing the
principle, because regularly there can be
no Exec. de son tort where there is a right-
ful Exec. And he cannot be considered as

Co. Lit. 77. Bacon 44 2 Vern. 394 Cro. Eliz. 233

Bacon 44 Cro. Eliz. 233

what

Real Estate

on what principle, it is pretended, can
they vest the custody of the Great
Seal with the Lord Keeper?

Do acts of attainder of the Grantee
vacate grants? Or grants to Corporations
of which the Grantee is a member?
Or the Grantee's heirs?

Can the Crown grant Lands in
the name of Elizabeth late Queen
of England? Or the Grant of
a Peerage?

Can the Crown grant Lands with
a power of Revocation? Or a Power
of Appointment?

Can the Crown grant Lands with
a power to the Grantee or Corporation
to alter the general rule of Descent
of the Lands granted?

Can the Crown grant Lands to
a Grantee and his heirs male?

Can the Crown grant Lands to
a Grantee and his heirs male
of his body?

Can the Crown grant Lands to
a Grantee and his heirs male
of his body by Elizabeth his wife?

Can the Crown grant Lands to
a Grantee and his heirs male
of his body by Elizabeth his wife
begotten?

Can the Crown grant Lands to
a Grantee and his heirs male
of his body by Elizabeth his wife
begotten and to be begotten?

Can the Crown grant Lands to
a Grantee and his heirs male
of his body by Elizabeth his wife
begotten and to be begotten
during the life of the said
Elizabeth?

Real Estate

this case their rights in and to the
premises in controversy thereby.

Then for ground rent Damages
&c. and decreeing when the bill
&c.

And here the general rule is that
a bona fide purchaser without notice
of the fraud, for valuable consideration
and without notice, acquires a title
free from the equity to which the property
was subject while in the hands of the fraudulent
vendor: but this rule does not apply where
the purchase is made pendente lite
for in such case the purchaser is bound
by the decree rendered in the cause
and his title is subject to the rights
of the complainant as established by the decree
&c. &c. &c.

Let there be the usual reference
to the Master to state an account
&c. &c. &c.

Real Property

Though a fraudulent conveyance binds
the grantor and all claiming under him
yet it is a settlement good as against
[illegible] equitable interest remaining
in grantor when through the covin alone
(Cath. 3-19 to 4.
between him and the grantee
or in contemplation

Though equity will not generally en-
force voluntary covenants yet a
voluntary trust for a specific thing
will be good in equity if it be put out
of the settlors power & the cestui que
trust has notice of it for equity favors
the completion of imperfect gifts
& agreements in consideration
of consanguinity or natural affec-
tion will be specifically decreed in
equity and in favour of a wife or child
Cath. 187.
Bid. 64.
but not in favour of those of a
more distant degree as friend children

Reeve
and
Goulds
Lectures

W. Bond

IV